

## PLATFORM AGREEMENT

This platform agreement and the Exhibits attached hereto (the “**Agreement**”), is made and entered into as of the date it is last executed by the parties below (the “**Effective Date**”), by and between Cayan LLC, a Delaware limited liability company (the “**Company**”) with its principal place of business at 3550 Lenox Rd NE #3000, Atlanta, GA 30326, and the Merchant listed below (“**Merchant**”). In consideration of the mutual covenants contained in this Agreement, the parties hereby agree as follows:

### MERCHANT INFORMATION

Merchant DBA Name				Entity Type		
Legal/Corporate Name				State of Jurisdiction		
Address	City	State	ZIP			
Contact	Title	Phone	Email			

### ORDER SCHEDULE

GENIUS® CUSTOMER ENGAGEMENT BUNDLES	FREQUENCY	FEE	QTY	TOTAL <sup>1</sup>
<b>Genius® Countertop CED</b> <i>Available either as a leased bundle (device and Genius Platform software with stand and base), or as a standalone license running on separately purchased equipment.</i>	<input type="checkbox"/> Bundled Lease Per Platform License Monthly	Transaction Fee Per Transaction Recurring		
<input type="checkbox"/> Software Only Device Purchase: Transaction Fee	Per Platform License Per Device <sup>3</sup> Per Transaction Recurring	Monthly One time Recurring		
<b>Genius Handheld™</b> <i>Portable version of the CED. Available either as a leased bundle (device and Genius Platform software with included case), or as a standalone license running on separately purchased equipment.</i>	<input type="checkbox"/> Bundled Lease Per Platform License Monthly	Transaction Fee Per Transaction Recurring		
<input type="checkbox"/> Software Only Device Purchase Transaction Fee	Per Platform License Per device <sup>3</sup> Per Transaction Recurring	Recurring One Time Recurring		
<b>Genius Mini™</b> <i>Payment software for mobile devices, through use of attached device, that connects through either Bluetooth or audio jack connections.</i>	<input type="checkbox"/> Service Fee Per Platform License Monthly	Device Purchase: Per Device – Bluetooth Per Device – audio jack One time One time		
	Transaction Fee Per Transaction Recurring			
<b>GENIUS: ADDITIONAL OPTIONS</b>				
Yes No				
<input type="checkbox"/> <input type="checkbox"/> <b>Genius Smart P2PE™</b> <i>Point to point device encryption</i>	Service Fee Per Device Monthly	Transaction Fee Per Transaction Recurring	\$ 4.95	
<input type="checkbox"/> <input type="checkbox"/> <b>Device Accessories</b> <i>Purchased from Company. Handheld Case included with each purchase or bundled lease. Stands / charging stations purchased separately.</i>	<input type="checkbox"/> CED Stand (included in countertop lease) One time	<input type="checkbox"/> CED Stand Base One time		
	<input type="checkbox"/> Handheld™ Case & Lanyard One time	<input type="checkbox"/> Handheld™ Stand/Charging Station One time		
	<input type="checkbox"/> Handheld™ Multi-Charging Station One time	<input type="checkbox"/> Genius Mini™ Bluetooth Device Holder One time		
<input type="checkbox"/> <input type="checkbox"/> <b>Setup Options</b>	<input type="checkbox"/> Injection, Intake, Swap Fee (per device) One time		\$ 39.00	
<input type="checkbox"/> <input type="checkbox"/> <b>Splash Screen</b>	One image per month Per device <sup>2</sup>		\$ 4.95	
<input type="checkbox"/> <input type="checkbox"/> <b>Google Local Inventory Ads</b>	Recurring Service Fee Per location (MID)			
<input type="checkbox"/> <input type="checkbox"/> <b>Analytics Dashboard</b>	Recurring Service Fee Per Account			
<input type="checkbox"/> <input type="checkbox"/> <b>Card Account Updater</b>	Recurring Service Fee Per Location Monthly	Transaction Fee Per Updated Token Recurring	\$ 19.95 \$ 0.15	

### GENIUS: ADDITIONAL FEATURES

<input type="checkbox"/> <input type="checkbox"/> <b>Cash Back</b> <sup>4, 5, 6</sup>	<input type="checkbox"/> Standard Prompts: \$10 \$20 \$30 \$40 Limit: \$100	<input type="checkbox"/> Custom Prompts (limit \$100): \$ \$ \$ \$ Limit: \$
<input type="checkbox"/> <input type="checkbox"/> <b>Counter Tip</b> <sup>5</sup>	<input type="checkbox"/> Standard Prompts: 10% 20% 30% 40% 50%	<input type="checkbox"/> Custom Prompts: % % % % %
<input type="checkbox"/> <input type="checkbox"/> <b>Level 3 Data</b>	<i>Business to business transaction information</i>	
<input type="checkbox"/> <input type="checkbox"/> <b>Keyed Refund</b>	<i>Allows manual entry on CED for refunds if card cannot be read</i>	
<input type="checkbox"/> <input type="checkbox"/> <b>Line Item Display</b>	<i>SKU data detail on CED screen (if supported by Merchant's POS system)</i>	
<input type="checkbox"/> <input type="checkbox"/> <b>Store and Forward</b>	<i>Offline transaction processing (See section 14 for more information)</i>	
<input type="checkbox"/> <input type="checkbox"/> <b>Payment Acceptance</b>	<input type="checkbox"/> Credit <input type="checkbox"/> Debit <input type="checkbox"/> NFC <sup>7</sup> <input type="checkbox"/> EBT Cash <sup>8</sup> <input type="checkbox"/> EBT SNAP <sup>8</sup> FNS #	

<b>Merchant Services Processor</b>	<b>Annual Volume</b>	<b>Annual Transactions</b>	<b>SIC Code</b>
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GENIUS® CARD NOT PRESENT SOLUTIONS			FREQUENCY	FEE	QTY	TOTAL <sup>1</sup>
Yes No						
<input type="checkbox"/> <input type="checkbox"/>	<b>Card Not Present Gateway Services</b>	Transaction Fee	Per Transaction	Recurring		
<input type="checkbox"/> <input type="checkbox"/>	<b>Genius Checkout™</b>	<input type="checkbox"/> AVS/CVV	Service Fee	Monthly		
	Online shopping cart integration plus add the security of fraud scoring with Fraud Prevention powered by Kount	<input type="checkbox"/> Kount Standard	Service Fee	Monthly	\$ 19.95	
			Per Risk Inquiry	Recurring	\$ 0.10	
		<input type="checkbox"/> Kount Enterprise	Service Fee	Monthly	\$ 99.95	
			Per Risk Inquiry	Recurring	\$ 0.08	
<input type="checkbox"/> <input type="checkbox"/>	<b>Encrypted Keypad</b>	<input type="checkbox"/> M100	Per Device	One Time	\$ 99.00	
		<input type="checkbox"/> M130	Per Device	One Time	\$ 129.00	
<input type="checkbox"/> <input type="checkbox"/>	<b>Genius eCommerce Platform</b>	<input type="checkbox"/> Salesforce Commerce Cloud <input type="checkbox"/> Magento Extension <input type="checkbox"/> Other: _____				

PAYMENT GATEWAY SERVICES ONLY			FREQUENCY	FEE	QTY	TOTAL <sup>1</sup>
<input type="checkbox"/> <input type="checkbox"/>	<b>Payment Gateway Service</b>	Recurring Service Fee	Per Location	Monthly		
		Transaction Fee	Per Transaction	Recurring		
		One-time Setup Fee	Per Location	One time		

<sup>1</sup> Plus applicable taxes. <sup>2</sup> Genius Platform enables access to additional payment types, services, and programs. Additional agreements may be required. <sup>3</sup> If purchased from Company, Company will support any issues related to the Genius software and/or service as set forth on the agreement. Company cannot support or be responsible for hardware or other equipment purchased from other sources; any such equipment is the sole responsibility of such manufacturer or seller. <sup>4</sup> Debit transactions only. <sup>5</sup> If supported by Merchant's POS system. <sup>6</sup> Merchant is responsible for the discount rate on the total authorization amount. <sup>7</sup> Near Field Communications for touchless transactions using portable devices. <sup>8</sup> Subject to POS software support, program enrollment, and certain industry limitations.

FINANCIAL INSTITUTION INFORMATION					
Depository Bank:		Branch:			
Routing Number:		City:			
Account Number:		State:		Zip	

By signing below, the Merchant agrees: (a) to the terms of this platform agreement, consisting of this ("Order Schedule") above, the Terms and Conditions set forth on Exhibit A, and any location information listed on Exhibit B, which are incorporated herein by reference and made a part of this agreement; (b) that the services and products identified on the Order Schedule shall be governed by and subject to the agreement; and (c) to the ACH authorization described herein.

Merchant Name: \_\_\_\_\_

For any questions under this Agreement, please contact:

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

**Cayan LLC**

Name: \_\_\_\_\_

101 Arch Street, Suite 900, Boston, MA 02110

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

800-941-6557

Date: \_\_\_\_\_

<https://help.tsys.com>

**EXHIBIT A**  
**TERMS AND CONDITIONS**

**1. THE SERVICES.**

1.1.If selected on the Order Schedule above, and subject to the terms of this agreement, Company shall make available to Merchant: (a) Company's proprietary GENIUS® Customer Engagement Platform® ("**Platform**") which includes access to certain Company application programming interfaces (the "**APIs**") and related documentation in order to allow Merchant (or Merchant's third-party provider) to integrate the Platform with products not provided by Company (the Platform, APIs, and any other software licensed under this agreement are collectively referred to as (the "**Software**")); (b) access to Company's proprietary payment gateway service ("**Payment Gateway**"), to allow Merchant, in accordance with the terms of this agreement and its merchant agreement with Company or its payments processor, to accept cards for payment issued by: Visa, Mastercard, Discover, and American Express (each a "**Card Brand**" and collectively the "**Card Brands**"); (c) the Portal Virtual Terminal; and (d) Additional Features and Equipment, as defined below (collectively the "**Services**");

1.1.1. "**Additional Features**" include: (a) the ("**Splash Screen**") which allows the display of promotional messages, branding, or informative updates; (b) ("**Cash Back**") which allows the customer to select an amount to receive in cash as part of debit transactions according to preset and maximum values selected by Merchant on the Order Schedule; (c) ("**Counter Tip**") which allows a customer to add a tip value to the total purchase amount prior to authorization according to preset values selected by Merchant on the Order Schedule (each of Cash Back and Counter Tip amounts are processed as part of the sale amount and are subject to the terms and conditions defined in the applicable merchant agreement); and (d) ("**Line Item Display**") which displays individual line items on the CED display through the utilization of sending local IP messages from the POS system; and(e) any other optional features as described in section 14;

1.1.2. "**Equipment**" includes the Customer Engagement Device ("**CED**") provided by the Company as further described herein, and certain other peripheral equipment, such as dedicated encrypted magnetic stripe readers ("**MSRs**"), encrypted keypad and other hardware provided by the Company and/or a third party subject to this agreement (these devices are subject to the additional terms described in section 12 of this agreement);

1.2.Any part of the Services may be provided by certain Affiliates of the Company. ("**Affiliate**") means any entity which is controlling, controlled by, or under common control of Company.

2. **THIRD-PARTY PROCESSING.** If indicated on the Order Schedule, Merchant may elect to use the services of a third-party provider of payment processing instead of the Company's payment processing services. In such a case, the Company may make available to Merchant, as a part of the Services, a means of interconnection for transmitting payment-related data through the Payment Gateway to the third-party payment processor for the purpose of processing payments. Merchant shall comply with all terms and conditions of use of any third-party payment processor's services.

3. **PAYMENT TERMS.** Merchant shall pay the fees for the Services in accordance with the terms described in this section.

3.1.Billing for all fees set forth in the Order Schedule will commence either: (a) the month that any Equipment is shipped to Merchant; or (b) if no Equipment is to be shipped to Merchant, the month in which Software credentials are provided to Merchant. The date that billing commences will be deemed the "**Launch Date.**" Company may increase fees hereunder upon 60 days' notice to Merchant.

3.2.**Authorization Agreement for Automatic Deposits (ACH Credits).** Merchant hereby authorizes Company and its authorized Affiliates, in accordance with the terms of this agreement, to initiate credit and/or debit entries by bank wire or ACH transfer to and from its deposit account. This authorization is without respect to the source of any funds in the deposit account, is irrevocable and coupled with an interest. This authority extends to any equipment rental or purchase agreements which may exist with Merchant as well as to any fees and assessments and chargeback amounts of whatever kind or nature due to Company under the terms of this

agreement. This authority is to remain in full force and effect at all times unless and until Company has consented to its termination. Merchant agrees to promptly notify Company of any changes in its bank account information that would affect credit and/or debit entries by bank wire or ACH transfer to and from its deposit account. In the event of an ACH reject, Merchant will pay Company an ACH reject reimbursement fee of \$25.00 per reject.

- 3.3. All costs, fees, and charges in this agreement (including shipping costs and other payments) are stated in U.S. dollars, and any taxes, duties, fees, and other governmental charges of any kind (including sales, service, and use taxes) that are imposed by or under the authority of any government or any political subdivision thereof on the fees for the Services shall be borne by Merchant and shall not be considered a part of, a deduction from, or an offset against such fees. The monthly Platform License fees are non-cancelable during the Term, and Merchant is responsible for paying all monthly fees for the Services selected on the Order Schedule, whether or not any transactions are processed. If Merchant fails to pay any fees when due, the Company may charge a late payment fee on the unpaid amounts equal to the lesser of (x) 10% per annum, or (y) the maximum legal rate, and, if Merchant has not cured such failure to pay within 30 days after notice thereof, the Company may take further action in its discretion including, without limitation, termination of the agreement immediately upon notice to Merchant (which shall not relieve Merchant of its obligation to pay all outstanding fees and all fees payable under the remaining length of the Term).
- 3.4. Merchant agrees to promptly and carefully review any statements or other documents made available (physically, electronically, or otherwise) by Company or others, including through Merchant's portal. Merchant must notify the Company in writing within 60 days of any disputed charges. If Merchant fails to notify the Company within the aforementioned 60 days, the Company shall have no obligation to investigate or take any other action regarding the disputed charge.
- 3.5. The parties agree that this agreement is a security agreement and Merchant hereby grants Company a security interest in Company's Equipment and Software to secure full and timely performance of all obligations owing by Merchant to Company under this agreement or any other agreement between Merchant and Company. Merchant agrees that, upon Company's request, Merchant will execute and deliver to Company any and all documents that Company may from time to time request to perfect Company's security interest.

#### 4. LICENSE.

- 4.1. Subject to the terms of this agreement, including payment of the fees as set forth on the Order Schedule, the Company hereby grants to Merchant, a limited, revocable, non-exclusive, non-transferable, non-sublicensable license to (a) access and use the Software by means of Merchant-provided remote network access; (b) display, download, print, and reproduce any documentation provided by the Company; and (c) only use the APIs as required to permit interaction and communication between Merchant's software and the Platform (the "**Platform License**").
- 4.2. Merchant hereby grants the Company a non-exclusive, worldwide license to use, reproduce, distribute, and transmit Merchant's name and logo (the "**Merchant Marks**") in connection with providing the Services, and represents and warrants that it has the right to do so. The Company agrees that it shall not, (nor assist any third party to) (a) use the Merchant Marks except as expressly authorized by Merchant in this agreement; (b) take any actions inconsistent with Merchant's ownership of the Merchant Marks and any associated registrations or contest the validity of the Merchant Marks or ownership thereof; (c) use the Merchant Marks in any manner that would impute any rights to the Company other than those of a licensee, or in any way disparage, blur, dilute, or otherwise diminish the Merchant Marks; or (d) use the Merchant Marks in marketing material without Merchant's consent, which will not be unreasonably withheld.

#### 5. OWNERSHIP; RESTRICTIONS.

- 5.1. Merchant acknowledges and agrees that it has no right to any of the trademarks, service marks, logos, software, designs, templates, encryption algorithms, copyrights, and other proprietary rights, and any documentation related to any of the foregoing used in the provision of the Services (collectively, "**Company IP Rights**"), and that the Company IP Rights are and shall remain solely and exclusively owned by the Company (or other third party owner as the case may be).
- 5.2. To the extent Merchant obtains any right, title or interest in any of the Company IP Rights, or Company IP Rights stemming from any update, enhancement, derivative, or modification to the Services (including in connection with any integration of the Platform with other services or products via use of the APIs) ("**New Company IP Rights**"), Merchant hereby assigns to the Company any and all such right, title and interest. Merchant

acknowledges that any improvements, additions, or modifications to the Services, or any documentation related to the foregoing suggested by Merchant, and all Company IP Rights contained therein, are the property of the Company, and Merchant hereby assigns all right, title, and interest therein to the Company. Merchant agrees to execute such documents as may be necessary or helpful for the Company to perfect and record the assignments set forth above. The Company grants no implied licenses hereunder. Except for the license grants expressly set forth in this agreement, nothing in this agreement grants to or confers upon Merchant any license or right of ownership in any of the New Company IP Rights. Merchant acknowledges and agrees that it shall not import, export, or re-export from the Services, or otherwise provide to any third party, directly or indirectly, any data that is captured through use of the Services.

5.3. Merchant shall have no right to market, distribute, sell, assign, pledge, sublicense, lease, deliver, or otherwise transfer the Services, or any component thereof, to any third party. Merchant shall not, and shall not permit any third party to, use the Services directly or indirectly to provide a time-sharing or subscription service to any third party or to function as a service bureau or application service provider. Merchant shall not reverse engineer, decompile, disassemble, translate, modify, alter, create any derivative works based upon, or otherwise change the Software or any part thereof, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Software included in the Services, or any part thereof in any way except via access provided through use in accordance with the Company documentation and the terms of this agreement.

5.4. Merchant shall comply with all security and operational requirements, policies, and procedures relating to the Services as specified in the documentation related thereto and as may be otherwise communicated or provided by the Company. Merchant shall use the Services solely in the conduct of its business and in compliance with all applicable laws, rules, and regulations of every governmental authority ("**Laws**") or Card Brand ("**Rules**") having jurisdiction over Merchant.

5.5. During the Term, the Company may from time to time provide Merchant with Card Brand, payment type, or other decals and program marks ("**Program Marks**"). Merchant agrees to prominently display the Program Marks at each location where the Services are provided including, but not limited to, all physical locations, in catalogs, on websites, and on other promotional material as required by the Company. Merchant's display of Program Marks does not constitute or imply an endorsement of Merchant by the Company or any Card Brand. Merchant shall not alter or remove from the Services any trademarks, trade names, logos, patent, or copyright notices, or other notices or markings, or add any other notices or markings thereto.

6. **DATA PRIVACY AND SECURITY.** In accordance with its obligations under the Payment Card Industry Data Security Standard ("**PCI DSS**") and under this agreement, the Company acknowledges its responsibility for securing cardholder data, and confirms that it complies, and will continue to comply through the Term of the agreement, with PCI DSS, all Rules, and all other security protocols, advisories, standards, and guidelines required by the Card Brands (collectively, the "**Security Standards**"). In order to provide the Services under this agreement, the Company will process data and other information collected through Merchant's use of the Services, including without limitation, transaction type, order number, and other payment information; certain customer or demographic data provided as part of the transaction; and software version, terminal ID, time/date, and other technical information logs and product information relating to the transaction (collectively, the "**Transaction Data**"). Any data captured or collected under this agreement will be stored and used by the Company in accordance with the Security Standards and applicable Laws and Rules, including (subject to the licenses and restrictions hereunder), the use of tokens, encryption, aggregation, and de-identification. Company may utilize the Transaction Data to enroll Merchant into third party programs and services at no charge to Merchant, which Merchant will have the ability to decline at its option. The Company will maintain, and will provide upon request, a current attestation of compliance by third-party Qualified Security Assessor certified by the PCI Security Standards Council.

## 7. **CONFIDENTIALITY.**

7.1. **Confidential Information.** "**Confidential Information**" means information relating to the disclosing party, without regard to form, that is disclosed to or becomes known to the receiving party as a result of activities under this agreement and is not otherwise generally known in the relevant trade or industry. Confidential Information includes, but is not limited to: information concerning the business, operations, or affairs of the disclosing party, proprietary ideas, techniques, technological developments, financial information and results, audits of any kind, customer information, pricing, supplier lists, business forecasts, software, sales, merchandising, marketing plans and materials, and any other information which is marked or designated as

confidential, restricted, proprietary, or with a similar designation, or, if unmarked, which the receiving party should reasonably know is confidential.

7.2. **Obligations.** Upon receiving Confidential Information from the disclosing party, the receiving party will: (a) not use the Confidential Information for any purpose other than the performance of its obligations under the agreement; (b) not disclose Confidential Information to any third party except with the prior written consent of the disclosing party; (c) protect the Confidential Information using the same procedures and practices as it uses to protect its own Confidential Information; (d) require its agents who may gain access to the Confidential Information during the performance of their duties under this agreement to comply with the provisions of this agreement. Each party will be responsible for any acts or omissions by its agents to whom it has disclosed Confidential Information which are in violation of the terms and conditions of this agreement. Neither party will be in breach of the provisions of this section to the extent that the party must disclose Confidential Information to comply with Laws or Rules to a governmental agency, third party having regulatory control over a party, or to the Card Brands.

7.3. **Exclusions.** The provisions of this section do not apply to Confidential Information which the receiving party can prove: (a) exists in the public domain by means other than a breach of this agreement; (b) is obtained from a third party who is lawfully authorized to disclose that information; (c) can be demonstrated to have been independently developed without reference to anything protected by this section; (d) is authorized for release by written consent of the disclosing party; (e) is required to be disclosed by law or by judicial or administrative process in connection with any action, suit, proceeding or claim or otherwise applicable law; or (f) is required to be disclosed as part of the financial or legal disclosure requirements of a publicly traded company.

8. **NO WARRANTIES.** *Company provides the Services "AS IS" and "AS AVAILABLE." Company specifically disclaims all warranties of any kind, whether express, implied, or statutory, including, but not limited to, the implied warranties of title, non-infringement, merchantability, fitness for a particular purpose, or any warranty arising out of any proposal, specification, or sample. In particular, but without limitation, Company does not warrant that the operation of the Services will be uninterrupted or error free. Company makes no warranties that the Services will operate in conjunction with any other software, hardware, or other systems outside this agreement.*

## 9. INDEMNIFICATION.

9.1. **By Merchant.** Merchant shall indemnify, defend, and hold Company harmless from all claims, demands, loss (financial or otherwise), damage, liabilities, costs, fees, increased expenses (including without limitation, interest, penalties, court costs and reasonable attorneys' fees), which may be incurred or claimed by Company or any third party as a result of: (a) Merchant's acts or omissions in utilizing the Services (b) Merchant's breach of this agreement; (c) Merchant's failure to comply with Laws and Rules; (d) any representation or warranty made by Merchant to any third person other than as specifically authorized by this agreement; or (e) Merchant's willful misconduct, other intentional acts or omissions, or fraud.

9.2. **By Company.** Company shall indemnify, defend, and hold Merchant harmless from all claims, demands, loss (financial or otherwise), damage, liabilities, costs, fees, increased expenses (including without limitation, interest, penalties, court costs and reasonable attorneys' fees), which may be incurred or claimed by Merchant as a result of (a) Company's failure to comply with Law or Rule; or (b) Company's willful misconduct, intentional acts or omissions, or fraud.

## 10. LIMITATION OF LIABILITY.

10.1. *Company shall not be liable to Merchant for any indirect, special, incidental, exemplary, punitive, treble, or consequential damages (including, without limitation, loss of business, revenue, profits, goodwill, use, data, or other economic advantage), whether based on breach of contract, tort (including negligence), product liability, or otherwise, and whether or not Company has previously been advised of the possibility of such damages. To the fullest extent not prohibited by law, Company's aggregate liability to Merchant under this agreement will not exceed the lesser of \$25,000 or the compensation paid by Merchant under this agreement for the 12-month period prior to the event giving rise to damages.*

## 11. TERM/TERMINATION.

11.1. This agreement will extend from the Effective Date indicated on the Order Schedule for an initial term of three years from the Launch Date (the "**Initial Term**"), and shall continue thereafter and renew for successive additional one-year terms starting on the third anniversary of the Launch Date (each a "**Renewal Term**" and

together with the Initial Term, the “**Term**”) unless either party provides written notice to the other of its intent not to extend at least 60 days prior the end of the then-current Term. It is possible that Merchants with multiple locations will have multiple Launch Dates. For avoidance of doubt, this agreement will remain in force as long as there is time remaining on the Term at any of Merchant’s locations listed on Exhibit B.

11.2. Either party may terminate this agreement immediately upon written notice to the other if the other party (a) materially breaches this agreement and fails to cure such breach within 30 days following written notice thereof, or (b) becomes or is declared insolvent or bankrupt, commits an act of bankruptcy, or is subject to any proceeding in bankruptcy, receivership, liquidation, or insolvency.

11.3. Upon the termination or expiration of this agreement, any and all licenses granted for use of the Services hereunder shall terminate and Merchant shall immediately return to the Company any and all full, complete, and intact Equipment as specified in section 12.4, and each party shall comply with the provisions regarding the return or destruction of Confidential Information set forth in section 7.

11.4. If Merchant terminates this agreement during the Term, other than for an uncured breach of the agreement by the Company, Merchant agrees to pay the Company an early termination fee of \$400.00 per Platform License associated with the Merchant account or the Payment Gateway if the termination occurs in the first year of the Term, and \$250.00 per Platform License associated with the Merchant account or the Payment Gateway if the termination occurs in any subsequent year of the Initial Term (the “**Early Termination Fee**”) and return the Equipment to the Company (other than Equipment purchased by Merchant) or pay the Repair/Replace Fee to the Company as provided in section 12.4.

12. **ADDITIONAL TERMS FOR USE OF EQUIPMENT.** If indicated on the Order Schedule, Merchant will receive Equipment which is subject to the following additional terms:

12.1. If the Company provides Equipment as per the Order Schedule to Merchant with the Software pre-installed, Merchant is granted a limited, revocable non-exclusive, non-transferable license to use the Software installed on the Equipment subject to section 4 and in accordance with the terms and conditions of this agreement. If Merchant is purchasing or providing its own devices hereunder, Merchant will be responsible for delivering those devices to the Company or its appointee in accordance with this agreement for Software installation.

12.2. Except as expressly set forth to the contrary herein, any Equipment shall remain subject to control by the Company, and no right, title, or interest thereto shall be transferred to Merchant. The Company will load any images to the CED’s screen, including, but not limited to, graphics, logos, and other content (collectively, the “**Display Content**”); provided, however, that in the case of content not requested by Merchant, the Company shall provide notice at least seven days in advance of such placement with the opportunity for the Merchant to reasonably opt out of the appearance of specific content appearing on the CED display. The Company reserves the right to use a portion of the display, not to exceed 20% of the screen, for purposes of showing trademarks, services, marks, and logos of the Company and payments types being offered by Merchant. Merchant grants the Company all rights necessary to convert, publish, and distribute the Display Content. The Company may, in its sole discretion, (a) refuse to publish any Display Content submitted to it, (b) defer publication of any Display Content, and (c) edit the Display Content for size and fit purposes. Merchant shall be and remain solely responsible for any Merchant content provided to the Company for display on the CED, and Merchant shall indemnify the Company for any intellectual property infringement or other violations related to Merchant-provided Display Content.

12.3. Merchant shall use the Equipment solely in the conduct of its business under this terms of this agreement, in a manner and for the use contemplated by the manufacturer thereof, and in compliance with all Laws and Rules related to the Equipment, the Software, or the Merchant. Merchant shall use all Equipment with reasonable care to prevent excessive wear and tear and/or damage. Without the prior written consent of Company, Merchant shall not permit any of the Equipment (either permanently or temporarily) (a) to be used or possessed by any persons other than the named Merchant, (b) to be subject to any liens or security interests of any third party, (c) to be moved to a location other than as set forth in this agreement, (d) to be utilized from an IP address different from the IP address assigned at initial installation, or (e) to be altered or modified. The Company will not be responsible for loss or damage due to alterations or additions to, misuse or improper use of, negligent handling of, or improper maintenance of the Equipment.

12.4. The Company shall be responsible, at Company’s expense, for the initial delivery to Merchant of any leased Equipment, as well as the delivery to the Merchant and back for any repaired or replaced Equipment leased from Company. Upon termination, or expiration of the agreement, Merchant shall be responsible at its own

expense, for the packing and delivery of the Equipment to the Company's premises during the Company's regular business hours within 30 days of the expiration or termination of this agreement. Merchant acknowledges and agrees that only Equipment leased from Company may be returned by Merchant. For any Equipment returned to the Company which have more than ordinary wear and tear, or if Equipment is not returned within the aforementioned 30 days, Merchant shall be obligated to pay the Company for the expenses which the Company may incur in repairing or replacing the Equipment (the "**Repair/Replace Fee**") (which shall not relieve Merchant of its obligation to return the Equipment to the Company). The Repair/Replace Fee will be an amount not to exceed \$500.00 per CED.

13. **ADDITIONAL TERMS FOR EMV LICENSE.** The Platform provided to Merchant hereunder may have embedded additional software for the processing of EMV cards (the "**EMV Software**") from a third party developer under a separate license with the Company, which is sublicensed to Merchant as part of the Software. Merchant's use of the EMV Software is subject to the following additional terms set forth in this section 13:

13.1. Merchant shall only use the EMV Software for Merchant's own use as part of the Software and not (a) sublicense or otherwise assign its rights to the EMV Software to any third party; (b) attempt to copy, duplicate, modify, convert, create derivative works from or distribute all or any portion of the EMV Software; (c) attempt to reverse compile, disassemble, reverse engineer, or otherwise reduce to human-perceivable form all or any part of the EMV Software; (d) build a product or service which competes with the EMV Software; or (e) allow any unauthorized access to, or use of, the EMV Software and notify the Company promptly of any such unauthorized access or use.

13.2. Merchant shall indemnify the Company and its respective officers, directors, agents and employees, from and against any and all liabilities, claims, demands, costs, expenses, damages, and losses incurred or suffered by the Company, or for which the Company may become liable (including legal and other reasonable professional costs and expenses), arising out of any act or omission of Merchant related to and including any use or misuse of the EMV Software or the sublicense. Notwithstanding any to the contrary in this agreement, in no event shall the cumulative liability from the indemnification provided under this section 13 exceed \$50,000.

14. **ADDITIONAL TERMS FOR OPTIONAL FEATURES.**

14.1. **Store and Forward.** Store and Forward provides Merchant the ability to store offline Transaction Data on the Genius 2.0 device in circumstances when Merchant is without internet connectivity or the Payment Gateway or processor is down and, once connectivity is restored, have the Transaction Data routed for processing ("**Store and Forward Feature**"). Merchant acknowledges and agrees that (a) Merchant's access and use of the Store and Forward Feature is at Merchant's sole discretion, (b) Merchant bears the sole risk for any transactions that are not authorized once connectivity is restored, and (c) the Company shall have no liability in connection with any such unauthorized transactions or Merchant's use of the Store and Forward Feature.

14.2. **Genius Checkout™.** If Merchant selects the use of Genius Checkout™, Merchant will be able to securely accept online payments through use of Merchant's website by converting payment data into a single use token for processing. The Genius Checkout™ service is initiated when Merchant's customer clicks the submit button on Merchant's website and sends payment data to Company. Because cardholder data is entered into Merchant's website prior to submitting the transaction to Company, Merchant is solely responsible for protection of data as it is entered, including guarding against various cross site scripting (XSS) attacks, injection attacks, or other risks that may compromise cardholder data. Once submitted to Company, all transaction information will be treated in accordance with the terms and provisions hereunder.

14.3. **Fraud Prevention Service Powered by Kount.** The Genius Fraud Protection Service ("**Fraud Protection**") provides Merchant with real time risk scoring for e-commerce transactions powered by Kount's fraud management risk scoring system. In order to use Fraud Protection, Merchant must also be subscribed to the Genius Checkout™. Each e-commerce transaction routed through Fraud Protection will be analyzed and assigned a score based on certain risk profile criteria that are set by default or by Merchant's customized settings. The risk score is a highly accurate prediction of fraudulent activity using predictive modeling and can help to reduce risk of fraud, but is provided for informational purposes only. Use of the risk scores and the decision of whether to accept or reject transactions scored with the Fraud Protection are entirely at the discretion of Merchant and are not guaranteed to identify fraud in every instance. The Company provides no warranty with respect to the scored transactions and bears no responsibility for Merchant's use of the risk scores in connection with the transactions, including any chargebacks or other losses that may result.

14.4. **Genius Smart P2PE™.** The Genius Smart P2PE™ service will provide Merchant with secure devices,



applications, and processes, including point-to-point encryption from the CED manufacturer through to Merchant to protect sensitive data from being compromised while processing transactions. By participating in the Genius Smart P2PE™ service, Merchant agrees that it has received, understands, and will be bound by the terms and conditions of the Genius Smart P2PE™ Instruction Manual (“**PIM**”), which includes installation, transit, and monitoring requirements. Failure to comply with the PIM by Merchant may result in risk to the encrypted services and Merchant’s non-compliance with PCI DSS obligations.

- 14.5. **Level 3 Payment Processing.** Level 3 payment processing enables merchants to conduct business-to-business transactions by including additional line item information to help companies better monitor spending. Level 3 data may include, without limitation, item codes, product descriptions, order numbers, zip code information, and more, and will be handled as Transaction Data under this agreement. Level 3 payment processing may also qualify merchants for lower interchange rates; contact your Company representative or your third party payment processor for additional information.
- 14.6. **Card Account Updater Service.** The card account updater service (“**Account Updater**”) is part of the Company’s Unified Commerce Solution™ Suite and provides Merchant with automatic account updates on credit card information stored by the Company in its proprietary card vault to reduce lost sales. If a customer’s expired card is updated or lost card is replaced, Account Updater automatically retrieves the information from the card issuer and updates the card information stored in the card vault and the payment tokens used to process integrated transactions.
- 14.7. **Data Analytics Service.** The Data Analytics Service is powered by Cayan’s RFMIQ™ and provides Merchant with detailed Transaction Data to analyze customer spending. Transaction Data may be accessed through the Portal Virtual Terminal. Use of the Data Analytics Service allows Merchant to download Transaction Data into a .csv file to review individual transactions or to create customer profiles to better understand purchasing habits, including number of visits, items purchased, and additional transaction information.
- 14.8. **Gateway Portal Virtual Terminal.** As part of the Platform, Merchant will have access to the Payment Gateway, where Merchant may manually enter encrypted transactions directly into the Merchantware® Gateway, process refunds, review chargebacks, and monitor transaction activity (collectively, the “**Portal Virtual Terminal**”). Use of the Portal Virtual Terminal is subject to the Portal Terms of Use available on the Portal Virtual Terminal website. In addition, Merchant agrees that it is (a) responsible for implementing and maintaining systems to ensure the protection and proper use of passwords and other access codes to the Payment Gateway and the hosted page, and for the accuracy and completeness of any data entered into the Payment Gateway, and (b) liable for any unauthorized access to the Payment Gateway or the Transaction Data through Merchant’s access codes or the hosted page.
- 14.9. **Google Local Inventory Ads Program.** Merchant may elect to enroll in the Google Local Inventory Ads Program (the “**LIA Program**”), pursuant to which certain line item sales transaction and product data, including but not limited to store identifiers (ID), item identifiers (UPC, GTIN, MPN, title, description, brand, color, size), quantities sold, pricing information, and timestamps (collectively, the “**LIA Data**”), will be transmitted to Google Inc. (“**Google**”) on a regular basis for Google’s Local Inventory Ad placement services. Participation in this LIA Program is optional and will be governed by the Google Advertising Program Terms (at <https://www.google.com/ads/terms> or such other URL as may be provided from time to time, including any modifications). The LIA Data feed, either directly or through POS partners on Merchant’s behalf, is subject to the Google Merchant Center Terms that generally apply to data feeds submitted to Google.

## 15. GENERAL.

- 15.1. **Governing Law and Venue.** The substantive and procedural laws of state of Georgia (without regard to its conflicts of law provisions) govern all matters arising out of or relating to this agreement whether based in contract, tort, or statute. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement. The parties each consent to the exclusive jurisdiction and venue of the federal or state courts located in Muscogee County, Georgia for any legal suit, action, or proceeding arising out of or relating to this agreement. The prevailing party in an action brought against the other to enforce the terms of this agreement or any rights or obligations hereunder, will be entitled to receive its reasonable costs and expenses of bringing such action including its reasonable attorney’s fees in addition to any other recoverable damages to the extent not prohibited by applicable law.

- 15.2. **Waiver of Jury Trial.** *The parties waive any right to trial by jury in any action arising out of, in connection with, or in any way related to this agreement.*
- 15.3. **Notices.** Merchant's notices or other communications under this agreement will be sent via hand-delivery or nationally-recognized courier and sent to Company at its address as specified in this agreement or via email to Company's email address on file. Company's notices or other communications to Merchant under this agreement will be sent via hand-delivery, nationally-recognized courier addressed to Merchant at its address as specified in this agreement, or via email to Merchant's email address on file. Both parties may update their addresses as necessary throughout the Term provided that they give notice to the other party pursuant to this clause. Notices and communications will be effective on the date of actual receipt.
- 15.4. **Relationship of Parties.** The parties will be deemed independent contractors and will not be considered agents, joint ventures, or partners of the other. Nothing in this agreement or in the course of the dealing of the parties will be construed as authorizing either party to obligate or bind contractually, in liability, or otherwise, the other party.
- 15.5. **Survival.** The sections titled Payment Terms, Ownership; Restrictions, Data Privacy and Security, Confidentiality, No Warranties, Indemnification, Limitation of Liability, Term/Termination, Additional Terms for Use of Equipment, Additional Terms for EMV License, Additional Terms for Optional Feature and General, any definitions of terms in such sections, and all other rights and obligations under this agreement which by their nature should survive will remain in effect after termination or expiration of this agreement.
- 15.6. **Amendments.** Except for the Order Schedule which can be modified under the terms of 3.1, no modification to this agreement will be binding unless in writing and signed by an authorized representative of each party. Notwithstanding the foregoing, Company may amend this agreement unilaterally to comply with changing Laws and Rules (including without limitation Card Brand and National Automated Clearing House Association (NACHA) rules) applicable to this agreement.
- 15.7. **Entire Agreement.** This agreement constitutes the entire agreement between the parties as to the subject matter hereof and supersedes any prior agreements between them relating to the subject matter hereof. Any oral representations, warranties or promises, made by a party which are not set forth in this agreement are of no effect. If Merchant chooses to use the Company for acquiring payment processing services, Merchant will also be required to execute the merchant card services application and accept the accompanying terms and conditions. No other terms and conditions will govern, including any terms of any purchase order or other document submitted by Merchant in connection herewith, and such terms will not modify the agreement and are hereby rejected by the Company. Notwithstanding the foregoing, the Company may in its sole discretion and without liability to Merchant amend the agreement to delete any Services set forth on the Order Schedule or terminate the agreement with regards to any part of the Services, upon written notice to Merchant, in the event that the Company determines that it is no longer reasonably able to offer such Services to Merchant. The Services provided by the Company hereunder are the Services as they exist on the Effective Date. Additional or upgraded services and products may be provided pursuant to different terms and/or costs in the Company's sole discretion.
- 15.8. **Assignment.** This agreement may not be assigned or transferred, nor may any duties of Merchant be delegated (by operation of law, merger or any other manner) by Merchant without Company's prior written consent, which will not be unreasonably withheld or delayed. Any purported assignment or delegation in violation of this clause is void. Company may assign this agreement to an Affiliate without consent or notice.
- 15.9. **Force Majeure.** Neither party will be liable for delay in performing any of its obligations insofar as the performance of such obligation is delayed by an event that is beyond its reasonable control. Any delay by a contracting party to perform its obligations arising from the occurrence of such an event must notify the other party as soon as possible, together with details of the circumstances giving rise to the event.
- 15.10. **Severability and Waiver.** If any particular sentence, right, duty or requirement of this agreement is held invalid or unenforceable by a court or agency having proper jurisdiction, all other provisions of this agreement will remain in full force and effect. Neither failure nor delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise preclude any further exercise of any other right, power or privilege. All waivers must be signed by the party waiving its right(s).
- 15.11. **Execution of Agreement.** This agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement. Each party may

sign this agreement using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.

