

**MERCHANT PROGRAM TERMS AND CONDITIONS**

These terms and conditions along with an underlying merchant agreement (“Master Merchant Agreement”) between you (“you”, “your” or “Merchant”) and TEMPOE, LLC (“TEMPOE”) with an effective date thereof (“Effective Date”) that references and incorporates these terms and conditions shall govern your participation in the Program and shall be a binding agreement when such Master Merchant Agreement is executed by the Parties. These terms and conditions and the Master Merchant Agreement are referred to collectively as the “Agreement”. Each of TEMPOE and Merchant are referred to as a “Party”, and collectively as the “Parties”.

**1. The Program**

**1.1 Program Overview**

**1.1.1** As you know, TEMPOE has established a leasing program (a “Program”) for customers or potential customers (“Customers”) of certain merchants (the “Merchants”), under which Customers may obtain the possession and use of certain of durable goods, accessories to durable goods and related services provided by, from or on behalf of Merchant (“Products”) with a potential option for Customer to obtain ownership, as the case may be.

**1.1.2** The Program includes a technology platform (“Platform”) which may include TEMPOE’s web technology and/or website for processing of Transactions (“Platform Website”), for submitting and processing agreements between Customers and TEMPOE for the potential leasing of the Product by Customer, and the ordering and purchase of the Product by TEMPOE (“Transactions”).

**1.1.3** The Parties shall cooperate with each other to administer Merchant’s participation in the Program, and the Parties will provide each other with information as necessary in furtherance of their rights and obligations under this Agreement. The Parties will establish a timeframe and schedule to onboard the Merchant into the Program.

**1.1.4** After onboarding, the Parties shall use the applicable Platform to process Transactions as set forth herein. From time to time Merchant will receive from TEMPOE, TEMPOE-approved documents including a form of disclosures, Transaction terms, privacy policies (including the provider data security policy), and similar Program documents, (collectively “Policies”). The terms of the Policies are incorporated herein. TEMPOE may change the Policies from time to time upon notice to Merchant. Merchant will follow the Policies, and provide Customers with related information as set forth in the Policies. Merchant understands that TEMPOE’s obligations depends on Merchant following the Policies and if Merchant does not follow the Policies, then TEMPOE will not be able to process the Transactions or otherwise properly administer the Program.

**1.1.5** Merchant will process Transactions by which Customers apply to TEMPOE to establish Transaction accounts (“Accounts”), all in accordance with the terms of this Agreement. Once a Customer has been approved by TEMPOE to lease one or more Products under the Transaction, the Customer becomes an accountholder with TEMPOE (“Accountholder”).

**1.1.6** Each Transaction executed by a Customer and approved by TEMPOE shall form a separate agreement between the Customer and TEMPOE only. Except as set forth herein,

for the Product of the applicable executed Transaction, TEMPOE agrees to buy the applicable Product from Merchant and Merchant agrees to sell the Product, in each case solely in accordance with the terms of this Agreement. Merchant shall ensure that all Products are provided from and delivered only within the territory set forth in the Master Merchant Agreement (or if no such territory is set forth, then the territory is deemed the United States) (“Territory”), the origination of any Transaction occurs only from within the Territory, and no information from outside the Territory is sent the Platform.

**1.1.7** TEMPOE reserves the right to restrict specific types of Products processed through the Program. TEMPOE may refuse in its discretion to enter into any Transaction. In the event that a Transaction for a restricted Product is processed by the Merchant after a restriction is in place or if a Transaction is otherwise rejected, TEMPOE shall not be responsible for the applicable Product and Transaction, and in the event TEMPOE has paid for the product, TEMPOE may charge back to Merchant the full cost of the Product (including taxes, shipping and handling as applicable).

**1.1.8** The Parties shall cooperate to resolve any disputes relating to any Transactions and any Accountholder issues. Merchant will properly code, describe, and make any changes or corrections necessary in the applicable systems and records in the event of mistakes and disputes regarding Products.

## **1.2 Transaction Processing**

**1.2.1** Merchant will transmit to TEMPOE complete information about all Products as provided in the Policies. Merchant will only accept and process applications from Customers or otherwise send orders for Transactions to the Platform for personal, family and household purposes only. TEMPOE may, in its sole discretion, decline or approve any application for a Transaction submitted. No Transaction shall be effective until approved by TEMPOE.

**1.2.2** Merchant will not impose any surcharge on Transactions made under the Program. Merchants will not require Accountholders to pay any part of any charge assessed to Merchant (if any) by TEMPOE, whether through any increase in price or otherwise, or to pay any contemporaneous finance charge in connection with the transaction charged to an Account.

**1.2.3** Merchant will not accept any payments from an Accountholder for charges billed on an account and will instead refer Accountholder to TEMPOE for payment. If for any reason Merchant inadvertently accepts payment from an Accountholder, Merchant will forward such payment immediately to TEMPOE. Merchant hereby grants TEMPOE a limited power of attorney to cash any checks or other instruments paid to TEMPOE by Accountholders inadvertently made out to the Merchant rather than TEMPOE.

**1.2.4** Merchant owners and their employees will not use or apply for TEMPOE Transactions without the express authorization of TEMPOE.

**1.2.5** If TEMPOE determines that Merchant has falsified or exaggerated the Transaction application in any respect, Merchant knows or should reasonably have known that the application contains false information, or any other material procedure contained within the Program Guide has not been met, TEMPOE may decline to pay proceeds due to Merchant as would otherwise be required hereunder.

### **1.3 Records and Notices**

After receipt Merchant will promptly forward to TEMPOE, at any time during or following Merchant's participation in the Program, a copy of any legal proceeding or communication relating to an Account received from an Accountholder or from a government or regulatory authority.

## **2. Products**

**2.1 New Products.** Merchant shall ensure that all Products shall be new and shall conform in all respects to the terms of the specifications of the Products and the warranties for the Products.

**2.2 Product Warranties, Repairs and Maintenance.** Merchant shall ensure that all Products carry a minimum of five (5) months parts and labor warranty coverage and shall assist TEMPOE to provide the benefit of the warranty and/or related maintenance/replacement (including out of warranty maintenance/replacement) to the applicable Accountholder, and Merchant shall ensure such warranty and maintenance shall extend and apply to Merchant and the applicable Accountholder, and such warranty and maintenance shall permit an assignment of the warranty and maintenance to another. Unless the warranty otherwise permits a third party to repair Products, Merchant shall be solely responsible for undertaking all repairs to Products that are covered by a manufacturer's warranty or an extended service plan ("ESP") and shall have the right to perform repairs not covered by warranty. TEMPOE will refer all Accountholder requesting repair service to Merchant for repairs. To the extent not prohibited by the applicable warranty, Merchant may undertake repairs using its service technicians, those of its affiliates, or any of its authorized independent service companies; and for all repairs that Merchant undertakes using its service technicians or those of its affiliates, Merchant shall invoice all in-warranty and ESP repairs to the appropriate obligor, i.e., the Product manufacturer or the ESP issuer. Merchant shall not void the applicable warranty or maintenance rights.

**2.3 Product Price.** Merchant will not charge TEMPOE an amount above the fair market value on any Products, and in no case will the price be greater than the price quoted to the Customer. Merchant will not charge TEMPOE an amount above the reasonable cost for shipping and handling of such Products, and in no case will the charge be greater than the charge quoted to the Customer. Charges for shipping and handling will not be greater than the charges quoted to the Customer or the reasonable prices for such shipping and handling if no such prices was quoted. Except for the foregoing, there will be no other charges for the Products. TEMPOE reserves the right to audit pricing and charge back to Merchant any amount found to materially exceed the foregoing amounts.

**2.4 Delivery of Products, Title and Risk of Loss.** Merchant will deliver all Products covered by any Transaction approved by TEMPOE prior to the time the charge is processed for the Transaction free and clear of any mortgages, liens, charges, pledges, security interests or other encumbrances or any rights of others to acquire any ownership interest in any such Product. Merchant will deliver Products to Accountholder consistent with the delivery procedures outlined herein. Risk of any loss of and/or damage to any Products delivered or otherwise provided by or on behalf of Merchant pursuant to this Agreement shall pass from Merchant at the time and place of delivery to and receipt of the Product by the Accountholder, provided that the Product satisfies all terms of this Agreement. Title to the Product shall pass to TEMPOE upon such delivery and receipt of the Product by Accountholder, provided that the Product satisfies all terms of this Agreement. All Products shall be shipped per the instructions of the Accountholder or TEMPOE

as conveyed by TEMPOE to Merchant and supplied in packaging suitable for the mode of transport to be used. TEMPOE shall not be charged for any shipping or handling except as agreed to in writing by TEMPOE.

**2.5 No Minimum Purchasing Commitments.** Unless otherwise agreed in a manually signed writing by TEMPOE, in no case shall this Agreement be deemed to constitute a commitment to purchase any Products or any particular amount of Products.

### **3. Financial Terms**

**3.1** Merchant must pay all applicable fees (if any) set forth by TEMPOE. The Master Merchant Agreement and the Policies set forth the costs and fees associated with the Program to be borne by Merchant, including but not limited to the general program discounts, and dealer specific discounts (collectively the “Merchant Fees”). Merchant Fees that are not otherwise credited to TEMPOE shall be paid by Merchant to TEMPOE within five (5) business days of the beginning of every quarter.

**3.2** The Master Merchant Agreement may set forth merchant rebate(s) to be paid or otherwise credited to Merchant (“Merchant Rebates”). Merchant Rebates that are not otherwise credited to Merchant shall be paid by TEMPOE to Merchant within five (5) business days of the beginning of every quarter.

**3.3** The Master Merchant Agreement may set forth the discount fees to be charged to Merchant or otherwise credited to TEMPOE (“Discount Fees”). Discount Fees that are not otherwise credited to TEMPOE shall be paid by Merchant to TEMPOE within five (5) business days of the beginning of every quarter.

**3.4** Throughout the Agreement, unless otherwise expressly set forth, one basis points used for calculating the Merchant Rebate means 1/100<sup>th</sup> of 1% of the applicable amount times; and all amounts dollar amounts with respect to a Transaction refers to the total price for the applicable Product (e.g., not including taxes, shipping and handling) paid by TEMPOE for the Transaction.

**3.5** Upon receipt of delivery confirmation of the Product for the applicable Transactions and all other required documentation and information, TEMPOE will deposit into Merchant’s designated bank account the total amount of all charges reflected in the Transactions less the total of any credits (from items not provided) or other offsets, any amounts to be charged back to Merchant and any Merchant Fees (if any) to be charged to Merchant on an established daily or monthly schedule agreed to by the Parties in writing, and if no such schedule is agreed to, within two business days after TEMPOE’s receipt of delivery confirmation and the documentation as further set forth in the Policies.

**3.6** TEMPOE will pay taxes if any are required to be paid by TEMPOE under applicable law, including retail sales tax for the purchase of Products under the executed Transactions as may be required.

**3.7** TEMPOE may charge back to Merchant any Transactions in its sole discretion, for example, because of fraudulent or dispute charges, defects in the Products, errors in processing Transactions or failure to deliver Products, based on TEMPOE or Customer's right to return Products or breach of this Agreement, or the Transaction is rescinded or otherwise canceled in whole or in part under applicable law. If TEMPOE exercises its charge back rights, TEMPOE may also charge back reasonable incidental charges paid or payable by or on behalf of TEMPOE. Merchant hereby authorizes TEMPOE to initiate ACH transfers of credits and debits to Merchant’s

designated bank account for purposes of settling Transactions hereunder and making necessary adjustments. At TEMPOE's discretion, Merchant Fees will also include any fees that are charged back to Merchant.

**3.8** All claims for money due or to become due from a Party shall be subject to deduction or setoff by the other Party by reason of any counterclaim arising out of this or any other transaction between the Parties. Without limiting the foregoing, all amounts paid to Merchant shall be netted out for voided leases, cancellations, refunds, exchanges, and other credits.

#### **4. Ownership and Intellectual Property**

**4.1** As between the Parties, TEMPOE solely and exclusively owns all rights, title and interests in the Program, including the Platform, and all enhancements to any of the foregoing, and all accounts and all information concerning Accountholders, Customers, applicants and accounts obtained in connection with the Program (collectively, "Accountholder Information") and all intellectual property rights therein. Subject to the terms of this Agreement, TEMPOE hereby grants Merchant a limited, non-exclusive, revocable right and license to access the Platform during the Term solely for the purpose of participating in the Program.

**4.2** Merchant hereby grants TEMPOE a nonexclusive license to use its name, trademarks, logos and other marks in connection with the administration and operation of the Program, during and after the Term of this Agreement. Merchant hereby permits TEMPOE to issue a press release about TEMPOE's association with the Merchant and the existence of this Agreement, upon approval of such press release by Merchant, such approval not to be unreasonably withheld.

**4.3** Nothing in this Agreement shall be construed as conferring any rights by implication, estoppel, or otherwise, under any intellectual property right, other than the rights expressly granted in this Agreement.

#### **5. Representations and Warranties**

Each Party represents and warrants that:

**5.1** such Party has full power and authority to enter into this Agreement and that this Agreement will not conflict with, result in a breach of, or constitute a default under any other agreement to which such Party is a party or by which such Party is bound or any applicable laws; and

**5.2** This Agreement is a legal and valid obligation binding upon such Party and enforceable in accordance with its terms.

#### **6. Confidentiality and Data Security**

**6.1** "Confidential Information" means any information disclosed previously or in the future by a Party disclosing the information ("Disclosing Party") to a Party receiving the information ("Receiving Party"), either directly or indirectly, in writing, orally or by inspection of tangible objects, relating to business plans, financial analyses, marketing plans, customer names, customer data, products, services, research, development, inventions, processes, designs, software, know-how or trade secrets, as well as any other proprietary or business information which is designated as "Confidential," "Proprietary" or some similar designation, or other information, the

confidential or proprietary nature of which is reasonably apparent under the circumstances. Confidential Information shall also include information disclosed to the Disclosing Party by third parties pursuant to a nondisclosure obligation, and shall also include the terms of this Agreement.

Information about the Platform, including authorization information, Accountholder Information, and all information about Transactions are deemed the Confidential Information of TEMPOE.

**6.2** Other than Accountholder Information, Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party; (iii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (iv) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as shown by documents and other competent evidence in the Receiving Party's possession.

**6.3** A Receiving Party shall not use any Confidential Information of the Disclosing Party for any purpose other than to participate in and administer the Program pursuant to the terms of this Agreement. A Receiving Party shall not disclose any Confidential Information of the Disclosing Party, except to those employees, directors, advisors, auditors, and attorneys of the Receiving Party who require the information for the foregoing purpose and who have agreed to confidentiality obligations at least as protective of the Confidential Information of the Disclosing Party as this Agreement.

**6.4** A Receiving Party shall exercise the same degree of care to protect Confidential Information of the Disclosing Party as it does to protect its own confidential information of like nature, which shall in no event be less than reasonable care. A Receiving Party shall immediately notify the Disclosing Party in the event of any unauthorized use or disclosure of the Disclosing Party's Confidential Information. A Receiving Party may disclose: (i) Confidential Information where requested or required pursuant to legal or judicial process (e.g., subpoena, interrogatories or similar legal process) or by law or regulation, provided that in such instance the Receiving Party shall use commercially reasonable efforts to provide advance written notice of such event to Disclosing Party and to reasonably cooperate with Disclosing Party (at Disclosing Party's sole expense) so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this Agreement, or both. If, absent the entry of a protective order or receipt of a waiver, the Receiving Party is, on the advice of its legal counsel, legally compelled to disclose such Confidential Information, the Receiving Party may disclose such Confidential Information to the person and to the extent required without liability under this Agreement provided that Receiving Party uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed; and (ii) the existence and summary of this Agreement in regulatory filings as required by law, regulation or standard accounting rules.

**6.5** All documents and other tangible objects containing or representing Confidential Information which have been disclosed to a Receiving Party by the Disclosing Party, and all copies thereof which are in the possession of the Receiving Party, shall be and remain the property of the

Disclosing Party and shall be promptly returned to the Disclosing Party or destroyed (at the Disclosing Party's option) upon the Disclosing Party's written request or upon termination of this Agreement. Nothing in this Agreement is intended to grant either Party any rights in or to the other Party's Confidential Information except as expressly set forth herein.

**6.6** Merchant shall at all times comply with the terms of the TEMPOE's provider data security policy found at [http://\\_\\_\\_](http://___) which may be changed from time to time by TEMPOE. Throughout such policy, the term "Provider" includes Merchant, and the term "Services" includes the processing by Merchant of the Transactions.

**6.7** Each Party agrees and acknowledges that any violation or threatened violation of this Section 6 will cause irreparable injury to the other Party, entitling the other Party to seek injunctive relief in addition to any other rights and remedies available to such Party at law or in equity.

## **7. Limitations of Liability**

EXCEPT WITH RESPECT TO FRAUD, MISREPRESENTATION, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BODILY INJURY, OR INDEMNIFICATION OR MERCHANT'S CONFIDENTIALITY OR DATA SECURITY OBLIGATIONS SET FORTH HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOST PROFITS OR SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **8. Indemnification**

**8.1** Merchant ("Indemnifying Party") shall indemnify, defend and hold harmless the TEMPOE ("Indemnified Party") and its affiliates, officers, directors, employees and agents from any losses, liabilities and damages of any and every kind, including, without limitation, any costs or expenses or reasonable attorney's fees incurred by any Indemnified Party for any third party claims arising out of (a) a breach by the Indemnifying Party's breach of any of the terms of this Agreement, or (b) fraud, misrepresentation, gross negligence, or willful misconduct of the Indemnified Party, its affiliates, officers, directors, employees and agents. Merchant's indemnification obligations shall also include any claims arising out of or related to the Product.

**8.2** Indemnifying Party with respect to any given claim has the right to control the defense of such claim, provided, however, that the Indemnified Party has the right to participate in such defense. Upon the Indemnifying Party's request, the Indemnified Party will reasonably cooperate in such defense, and the Indemnifying Party must reimburse the Indemnified Party for its reasonable out-of-pocket expenses in providing such cooperation. The Indemnified Party will provide prompt notification of any Claim to which it is entitled to be Indemnified hereunder to the Indemnifying Party, provided, however, that any delay by the Indemnified Party in giving such notice will not relieve the Indemnifying Party of its obligations hereunder, except to the extent that the Indemnifying Party demonstrates actual prejudice or damage caused by such delay.

## **9. Term and Termination**

**9.1** Unless a different term is set forth in the Master Merchant Agreement, the Agreement will begin on the Effective Date and continue in force for one (1) year, unless earlier terminated as set forth in the Agreement (the "Term"). This Agreement may be extended by

additional one (1) year periods in TEMPOE's sole discretion. This Agreement may be terminated earlier as provided in this Agreement.

**9.2** Either Party may terminate for convenience this Agreement and/or Merchant's participation in the Program, upon thirty (30) days written notice, for any reason or for no reason. Upon a termination for convenience, Merchant shall promptly pay back TEMPOE any and all signing bonuses, as set forth in the Master Merchant Agreement.

**9.3** This Agreement may be immediately terminated by either Party in the event of:

**9.3.1** a material breach of this Agreement that is not cured within thirty (30) days of notice of the breach by the other Party;

**9.3.2** the voluntary or involuntary insolvency of, or the institution of proceedings by or against, the other Party under any federal or state bankruptcy or insolvency law;

**9.3.3** an assignment by the other Party for the benefit of all or substantially all of its creditors;

**9.3.4** a cessation of the operations of the other Party.

**9.4** For Merchants with more than one store and/or website ("Location"), TEMPOE may terminate a specific Location(s) rather than all of the Merchant's Locations. In this event, the Merchant agrees to not send business from the cancelled Location to their active Locations or use login/password information or other authorizations for active Locations in order to affect Transactions at the canceled Locations. Discovery of this may lead to charging Merchants applicable Product fees and termination of Merchant from the TEMPOE Program.

**9.5** TEMPOE may suspend Merchant's participation in the Program, including the use of the Platform, if TEMPOE believes that the use of the Program and/or Platform is improper or otherwise unauthorized, if Merchant breaches this Agreement, if TEMPOE experiences an unusual volume or nature of disputes and/or charge backs, returns or credits relating to charges submitted by Merchant or in order to protect the Program and Platform otherwise.

**9.6** If the performance of TEMPOE's obligations under this Agreement would violate any law applicable to the Parties' obligations or rights hereunder, TEMPOE may either (A) terminate this Agreement upon thirty (30) days' prior written notice, or sooner if required by the applicable law or (B) suspend provision and access to the Program and Platform. If TEMPOE delivers any such termination notice to Merchant, this Agreement shall terminate upon the expiration of such thirty (30) day period (or sooner, if applicable), unless the Parties execute an amendment to this Agreement in accordance with the next sentence. During such thirty (30) day period (or sooner, if applicable) prior to the effective date of such termination, the Parties shall negotiate in good faith an amendment to this Agreement that resolves the violation of such applicable law while preserving the effect and intent of this Agreement.

**9.7** All provisions of this Agreement whose meaning requires them to survive shall survive the expiration or termination of this Agreement, including, but not limited to Sections 2 (Products), 4 (Ownership and Intellectual Property), 5 (Representations and Warranties), 6 (Confidentiality and Data Security), 7 (Limitation of Liability), 8 (Indemnification), 9 (Term and Termination), and 10 (General Terms).



## 10. General Terms

**10.1 Cooperation.** Each Party shall cooperate with the other with respect to the matters addressed in this Agreement, including by making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances, so that each Party may properly accomplish its obligations and responsibilities hereunder.

**10.2 Relationship of Parties.** The Parties acknowledge and agree that they are independent business actors and not partners, joint venturers or principal and agent. Neither Party has the right or power (whether express or implied) to, and shall not, make any commitments of any kind on behalf of, or otherwise bind, the other Party without prior written consent of the other Party. Except as otherwise expressly provided herein, neither Party undertakes, by this Agreement or otherwise, to perform any obligations on behalf of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other's business. A Party shall not be considered or deemed to be an agent, employee, joint venture or partner of the other Party. A Party's personnel shall not be considered employees of the other Party, shall not be entitled to any benefits that the other Party grants its employees and have no authority to act or purport to act on the other Party's behalf. Each Party shall be responsible for the conduct of its personnel. Neither TEMPOE nor Merchant has the right, and shall not seek, to exercise any control over the other Party. Each Party shall be solely responsible for hiring, firing, promoting, demoting, rates of pay, paying, taxes, benefits and other terms and conditions in regard to its own personnel.

**10.3 Remedies.** Unless otherwise specified in this Agreement, all rights, remedies and powers of a Party are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all other rights, remedies and powers given hereby or any laws now existing or hereafter enacted. Each Party shall use commercially reasonable efforts to mitigate any claim, liability or other cost for which another Party is or may be liable under this Agreement.

**10.4 Publicity and Use of Trademarks.** Except as set forth in this Agreement, neither Party shall use the name, logo, mark, brand, trademark or trade names of the other Party in publicity releases, promotional material, lists, advertising, marketing or business-generating efforts, whether written or oral and shall not advertise, publish or otherwise disclose in any press release or other form of distribution: (a) its association with the other Party; or (b) any aspects of this Agreement, except with the prior written consent of the other Party.

**10.5 Assignment.** Merchant may not assign this Agreement, or its rights or obligations hereunder without the prior written consent of TEMPOE. TEMPOE may, without Merchant's consent, assign this Agreement to an affiliate, or transfer or securitize all or any portion of the Accounts or any related rights or interests therein. Either Party may use subcontractors to perform its obligations hereunder but any such subcontracting will not relieve the Party of its obligations to other Party hereunder. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and permitted assigns.

**10.6 Amendment.** This Agreement may not be amended, modified or supplemented except by a written instrument signed by authorized representatives of both Parties.

**10.7 Non-waiver; Remedies Cumulative.** No delay by any Party hereto in exercising any of its rights hereunder or in the partial or single exercise of such rights shall operate as a waiver of that or any other right. No right under any provision of this agreement may be waived except in writing and then only in the specific instance and for the specific purpose for which such waiver

was given. The rights and remedies provided for in this agreement are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided for in law or in equity.

**10.8 Governing Law.** This Agreement and all rights and obligations hereunder, including but not limited to, matters of construction, validity and performance shall be governed by and construed in accordance with the laws of the State of Delaware. Any other laws which can be negated by agreement, including but not limited to the International Sale of Goods Law, are hereby negated and made ineffective by this Agreement.

**10.9 Dispute Resolution.** In the event of any controversy or claim arising from or relating to this Agreement or the breach thereof (a “Dispute”), the Parties shall use commercially reasonable efforts to settle the Dispute by negotiating with one another in good faith. If the Parties do not resolve the Dispute within thirty (30) days from the first receipt of notice of the Dispute by either Party, the Dispute(s) shall be finally settled by confidential and binding arbitration administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules (the “Rules”). Either Party may commence the arbitration by filing a demand for arbitration in accordance with the Rules and providing notice thereof in accordance with this Agreement. The arbitration shall be governed by the Federal Arbitration Act. The seat of arbitration shall be New Hampshire. Unless the Parties agree otherwise in writing: (a) the Dispute will be submitted to one arbitrator, (b) the consent of the Parties to selection of the arbitrator shall be contingent on the arbitrator’s commitment at the time of appointment to exercise reasonable efforts to issue a final award within six (6) months of such appointment, and (c) all hearings shall take place in the seat of arbitration. All aspects of the dispute resolution process set forth in this Section, including all written or oral submissions and exchanges of information in the arbitral proceedings and all awards, settlement or other discussions relating to the Dispute shall be kept by the Parties in confidence. Disputes shall be arbitrated on an individual basis. There shall be no right or authority for any Disputes to be arbitrated on a class action basis or in a purported representative capacity on behalf of the general public or other persons or entities similarly situated. The arbitrator’s authority to resolve Disputes and to make awards is limited to Disputes between the parties to this Agreement alone, and is subject to the limitations of liability of this Agreement. Furthermore, Disputes brought by either Party against the other may not be joined or consolidated in arbitration with Disputes brought by or against any third party, unless agreed to in writing by all Parties. No arbitration award or decision on any Disputes shall be given preclusive effect as to issues or claims in any dispute with anyone who is not a party to the arbitration. Each Party shall be responsible to pay arbitration fees (including filing, administrative, hearing and/or other fees) calculated in accordance with the Rules, without any fee-shifting. Each Party shall be responsible for payment of its own legal fees and related expenses. Any award rendered by the arbitrator shall be final and binding on the Parties and may be confirmed by any court of competent jurisdiction. Notwithstanding any of the foregoing, in the event of a breach or threatened breach of any provision of this Agreement, either Party may seek interim relief in aid of arbitration from any court of competent jurisdiction.

**10.10 Excused Obligations.** The Parties understand that the performance of certain of a Party’s obligations hereunder will depend on the performance of certain of the other Party’s obligations hereunder. To the extent other Party fails to perform its obligations hereunder and as a result the Party’s performance of any of its obligations hereunder is delayed or prevented by other Party’s actions or inactions, the Party shall be excused from performance thereof.

**10.11 Further Assurances.** Each Party hereto agrees to execute all such further documents and instruments and to do all such further things as any other Party may reasonably request or require in order to give effect to this Agreement.

**10.12 Notices.** All notices, demands and other communications provided for in this Agreement shall be in writing and delivered consistent with this Agreement and the Policies. In the case of Merchant, at the electronic address set forth in the Merchant application. In the case of TEMPOE, to the attention of the Chief Legal Officer, TEMPOE, LLC 7755 Montgomery Road, Suite 400, Cincinnati, OH 45236 and to the person executing this Agreement on behalf of TEMPOE as set forth below. All such notices and communications if duly given or made via U.S. Postal Service, when sent certified mail, shall be effective three business days after deposit in the mail and when sent by overnight courier shall be effective one business day after delivery to such overnight courier and otherwise shall be effective upon receipt.

**10.13 Force Majeure.** Neither Party shall be deemed to be in breach of this Agreement if it fails to make any payment or perform any other obligation and such failure is the result of a force majeure event, including any of the following: acts of God, fire, earthquake, acts of war or terrorism, explosion, accident, nuclear disaster, riot, material changes in applicable laws or regulations, including but not limited to a change in state or federal law or other event beyond a Party's reasonable control rendering it illegal, impossible or untenable for such Party to perform as contemplated in or to offer the Program on the terms contemplated under this Agreement.

**10.14 Compliance with Law.** Each Party shall comply with all laws applicable to their obligations under this Agreement. Merchant agrees that all Products shall comply with all applicable laws.

**10.15 No Third Party Beneficiaries.** Except to the extent expressly set forth in this Agreement, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein (whether express or implied) shall give or be construed to give any third party any legal or equitable rights hereunder.

**10.16 Severability.** If any provision of this Agreement is adjudged by a court to be invalid, void or unenforceable, the Parties agree that the remaining provisions of this Agreement shall not be affected thereby, that the provision in question may be replaced by the lawful provision that most nearly embodies the original intention of the Parties, and that this Agreement shall in any event otherwise remain valid and enforceable.

**10.17 Counterparts.** This Agreement may be executed in counterparts or duplicate originals, all of which shall be regarded as one and the same instrument.

**10.18 Order of Precedence.** To the extent there is a conflict between the terms of this Agreement, the order of precedence will be as follows: the Master Merchant Agreement, these terms and conditions, the attachments hereto, and the Policies, with the Master Merchant Agreement having the highest precedence.

**10.19 Construction.** No presumption or burden of proof shall be raised in any question of interpretation of this Agreement based upon any assertion that one Party or the other has drafted this Agreement or any provision hereof. In this Agreement, unless otherwise specified: headings are for ease of reference only and shall not be taken into account in construing or interpreting this Agreement; references to any Section, recital, paragraph, or attachment are to those contained in this Agreement and all attachments to this Agreement are an integral part of this Agreement and

are incorporated herein by such reference; references to any document or agreement (including this Agreement) shall include reference to such document or agreement as amended, extended or replaced from time to time (but excluding any such amendment, extension or replacement made in breach of this Agreement or the relevant agreement or document); the use of the term “including,” means “including without limitation,” “include without limitation” or “includes without limitation.” Similarly, the term “for example” and the abbreviation “*e.g.*” mean “as one example and without limitation of other examples”; the singular includes the plural and vice versa and any gender includes either gender; all references to time refer to the local prevailing time in New Hampshire; all references to days shall be to calendar days unless set forth otherwise and all business days shall be Monday through Friday, excluding holidays observed by TEMPOE in New Hampshire. Reference to “law” includes all federal, state, local and, if applicable, foreign laws, ordinances, codes, rules and regulations, statute, rule, delegated legislation, or order, as amended, modified, or replaced from time to time and to any such law replacing or made under any of them; any obligation in this Agreement on Merchant includes an obligation on Merchant to procure that all Merchant’s Personnel comply with that obligation; the expression “this Section” shall unless followed by reference to a specific provision be deemed to refer to the whole clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs; and “in writing” includes any communication made by letter or facsimile transmission, but not electronic mail (*e.g.*, email).

**10.20 Entire Agreement.** This Agreement is the entire agreement of the Parties with respect to the subject matter hereof. This Agreement supersedes any prior understandings and agreements between the Parties whether written or oral and will govern all prior transactions including all transactions previously submitted to TEMPOE regardless of the date of submission. The Parties expressly disclaim the right to claim the enforceability or effectiveness of: (a) terms on, attached to or referenced in any purchase orders; (b) any amendments to this Agreement that are not so submitted and signed by authorized representatives of both Parties; (b) any oral modifications to this Agreement; (c) any shrinkwrap or similar pre-printed terms, attached terms, or online, click-wrap, web-wrap or similar electronic agreements (including, without limitation, any terms or conditions subject to an accept button or other similar means of indicating acceptance); and (d) any other amendments, based on course of dealing, waiver, reliance, estoppel or other similar legal theory, and in each case, the terms of the foregoing in subsections (a) through (d) are hereby void, and are hereby objected to and rejected, without any further notice of such objection and rejection being required, provided that the terms of subsection (a) and (c) that give effect to Merchant’s or Product manufacturer(s)’s obligations with respect to the Products but do not otherwise conflict with this Agreement, or limit such obligations or TEMPOE’s or Accountholders’ rights, shall be binding on Merchant and the manufacturer(s) and shall be incorporated herein by reference.

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

Last Update: \_\_\_\_\_