



Master Commercial License and Services Agreement

This Master Commercial License and Services Agreement (this “**Agreement**”) is made by and between Transactility, Inc., a Delaware corporation organized under the laws of the United States of America having an address at P.O. Box 880195, Boca Raton, FL, 33488 (“**Transactility**”) and the Customer listed in the signature block at the end of this Agreement (“**Customer**”).

Intending to be legally bound, the parties agree as follows:

Background

Transactility is the provider of commercial licenses for jPOS, a proven, payments-enabling, open source, Java® platform-based, mission-critical, ISO-8583 based financial transaction library/framework that can be customized and extended in order to implement financial interchanges. A version of jPOS is distributed to the public under the GNU Affero General Public License (the “**Open Source jPOS Edition**”). A commercial license under this Agreement can be used to avoid the restrictions and requirements of the Open Source jPOS Edition.

Transactility also provides commercial software products that work with jPOS, including The Payments Platform (“**TPP**”), which consist of two related modules jCard and jPTS. jCard is a credit/debit card management system. jPTS enables message switching between the card transaction participants, approaching them as source, destination, control, monitoring and security stations, thereby normalizing all the messaging between them. Transactility may offer additional software modules and products in the future.

Transactility also provides support, deployment, consulting and other technical services as mutually agreed.

This Agreement serves as a master agreement, whereby the parties may agree to one or more Commercial Terms Schedules under the terms hereof.

1. Definitions

Capitalized terms not elsewhere defined in this Agreement shall have the following meanings:

“**Commercial Terms Schedule**” means a document that identifies the licensed Software, the term of license and other licensing terms, and/or Services to be provided. Commercial Terms Schedule No.1 may (but is not required to be) be attached at the end of this Agreement.

“**Documentation**” means the documentation and instructions made available with the Software, including documentation describing the functionality of the Software.

“**Including**” or “**Includes**” means “including, but not limited to” or “includes, but is not limited to”.

“**Instance**” means a single image of software configured to work with a single central database structure specific to such software image, whether executed on a physical or virtual machine.

“**Services**” means the support, deployment, consulting, and other technical services provided by Transactility to Customer under a Commercial Terms Schedule.

“**Software**” means the computer software and Documentation licensed by Transactility to Customer under the terms of this Agreement, as expressly agreed in a Commercial Terms Schedule, as well as any new versions, changes, additions and extensions thereto that Transactility may provide to Customer from time to time (including any such changes that Transactility may provide to Customer as part of any Services provided hereunder).

“**Tenant**” means a group of users (e.g. corresponding to a separate organization) who share a common access with specific privileges to a given Instance.

2. License and Restrictions

(a) Transactility grants to Customer a non-transferable, non-exclusive license (the “**License**”) to the Software, subject to the license rights, restrictions and terms set forth in the Commercial Terms Schedule and to Customer’s compliance with the terms of this Agreement, including payment of applicable license fees. The Software, for example, may be licensed based on number of Instances, number of Tenants, and/or other metrics.

(b) Customer shall not: (i) disclose, transfer, distribute, rent, lease, or sublicense the Software outside of Customer’s organization in any form (including, but not limited to, as source code or executable code) except to the extent expressly allowed in the Commercial Terms Schedule, or (ii) use, include, or embed any open source code (including but not limited to software licensed under the General Public License) or otherwise link to or in any way combine the Software with any such open source code in any manner that would require the source code associated with the Software (or any portion thereof) to be made available to any third party. However, the foregoing shall not be construed to limit Customer’s ability to distribute the Open Source jPOS Edition under the terms of the corresponding open source license.

(c) Except for the License, Transactility reserves all rights in the Software, including all associated intellectual property rights. Subject to the foregoing, Customer retains ownership of all modifications and additions that Customer makes to the Software. Notwithstanding anything to the contrary herein, Customer agrees that it will not assert any intellectual property rights against Transactility or its assignees or licensees that would prevent or limit Transactility or its assignees or licensees from developing, using or licensing software that performs functionality that is the same or similar as the functionality of any modifications or additions developed by Customer. Customer agrees to: (i) reproduce without alteration all copyright and proprietary rights notices in all copies of the Software and Documentation made by Customer, and (ii) comply with all applicable federal, state, local and foreign laws, rules and regulations in connection with its use of the Software.

(d) Customer shall be solely responsible for supplying, paying for, and maintaining all hardware, networking, third-party software, internet access, operating systems, and other functionality and technology required for use of the Software. Customer shall comply with all operational, environmental and maintenance recommendations and requirements of the applicable licensors, vendors and manufacturers of hardware and third-party software and systems.

(e) Customer agrees that Transactility may use any feedback regarding suggested improvements or changes to the Software and Services provided by Customer or end user, including without limitation to modify, supplement, or improve the Software and Services, without payment or compensation to Customer or any user.

3. Delivery of Software

Within five (5) business days of the execution of a Commercial Terms Schedule that includes the licensing of Software, Transactility shall provide to Customer the address of a web page or ftp site from which Customer may download the Software and the Documentation.

4. Fees and Payment

(a) Customer shall pay Transactility the license fee, Services fees, and/or other fees specified on the Commercial Terms Schedule (the “**Fees**”). Unless otherwise set forth on the Commercial Terms Schedule, all Fees will be invoiced on the effective date of the Commercial Terms Schedule and are due within thirty (30) days after invoice receipt. All payments shall be made in U.S. currency. Customer shall be responsible for all taxes associated with the Fees, excluding taxes based on Transactility’s net income.

(b) In the event that Customer: (i) requires Transactility to use or interact with a third-party vendor accounts payable management or credentialing firm or other service that imposes costs or fees on Transactility, or (ii) requires or requests changes in payment procedures or methods (such as use of credit cards, electronic payment services, or other means) that impose costs or fees on Transactility in order for Transactility to receive payment under this Agreement, then Customer will be fully responsible for and will reimburse Transactility for all such costs and fees.

(c) If a payment becomes thirty (30) days or more overdue and has not been disputed in good faith by Customer, Transactility reserves the right to suspend some of or all the Services, until payment is made in full. If Customer disputes an invoice, it must do so in good faith and within thirty (30) days of invoice receipt, and Customer agrees to negotiate a prompt resolution of the dispute with Transactility.

5. Customer Changes to Software

If Customer, in its sole discretion, provides Transactility with its changes (the “**Customer Changes**”) to the Software, Customer hereby:

(a) grants to Transactility a world-wide, perpetual, irrevocable, transferable, and sublicensable license under all associated intellectual property to use, copy, execute, modify, prepare derivative works from, publicly perform and distribute Customer Changes; and

(b) warrants that Customer has no knowledge or reason to believe that the Customer Changes infringe any intellectual property rights of any third party.

6. Services

(a) Unless otherwise agreed in a Commercial Terms Schedule, Customer is solely responsible for installing, configuring, customizing, and maintaining the Software.

(b) The parties may agree in writing from time on training, customization, programming, and other Services, as documented in a Commercial Terms Schedule or a mutually agreed Statement of Work (which will be deemed a Commercial Terms Schedule subject to this Agreement). Transactility will provide Services at the rate or fee set forth in the Commercial Terms Schedule (or at Transactility’s

current rate if no other fee or rate has been agreed). Transactility will own all intellectual property rights in all enhancements, customizations and other deliverables provided to Customer as part of the Services, all of which will be deemed part of the licensed Software under this Agreement.

(c) In connection with any Services, Customer shall provide Transactility with timely access to Customer's technical personnel, information, systems, security clearance and other items as reasonably required for performance of Services, including remote access to Customer's environment and any such items set forth in the applicable Schedule and Documentation (collectively, the "**Customer Responsibilities**"). Any delay resulting from Customer's failure to provide any Customer Responsibilities shall correspondingly extend any timeline that may be specified in this Schedule and may lead to additional fees due to compensate Transactility for additional time needed to deliver the Services.

(d) Transactility may agree to provide support and maintenance services in a Commercial Terms Schedule. If so, and unless otherwise agreed, the support terms located at www.transactility.com/terms/support shall apply. Transactility may update these support terms from time to time, provided that no such update will materially reduce the level of support and maintenance services provided by Transactility:

7. Term and Termination

(a) As a master agreement, this Agreement shall remain in effect until terminated as set forth herein. Termination of this Agreement shall not terminate any Commercial Terms Schedules that are in effect at the time of Agreement termination, unless otherwise agreed in writing by the parties. If there are no Commercial Terms Schedules in place under this Agreement, either party may terminate this Agreement upon ten (10) days written notice to the other party.

(b) A Commercial Terms Schedule may specify a term for the Software being licensed and/or the Services provided under such Commercial Terms Schedule (the "**Schedule Term**"). If so, after the end of the Schedule Term, the Schedule shall automatically renew for successive annual renewal terms, unless either party provides written notice of its intent to terminate such Schedule at least sixty (60) days prior to the end of the Schedule Term or applicable renewal term.

(c) Either party may terminate this Agreement or any Commercial Terms Schedule upon thirty (30) days prior written notice if the other party materially breaches this Agreement or such Commercial Terms Schedule and such material breach is not cured within the thirty (30) day period. Neither party shall have the right to terminate any Commercial Terms Schedule without cause except as set forth in Section 7(b) or as specifically agreed in the Commercial Terms Schedule.

(d) Effect of Termination.

- (a) The terms provided in Sections 2(c), 4, 5, 7(d), 8, 9, 10 and 11 of this Agreement shall survive any termination of this Agreement.
- (b) Upon termination of Customer's License, Customer agrees to: (i) return or delete all copies of the Software and Documentation; and (ii) provide Transactility upon request with a written notice certifying that it has complied with the requirements of this Section.
- (c) Upon termination of a Commercial Terms Schedule, Customer shall promptly pay Transactility all outstanding amounts due to Transactility under such Commercial Terms Schedule. If a Commercial Terms Schedule is terminated by Transactility due to

Customer's material breach per Section 7(c), or if Customer attempts to terminate a Commercial Terms Schedule without cause prior to the end of such Commercial Terms Schedule's then-current term, then all fees due for the remainder of the term of such Commercial Terms Schedule shall become immediately due and payable by Customer to Transactility as liquidated damages.

8. Confidentiality

- (a) Definition. “**Confidential Information**” means any information or data that is disclosed by one party to the other party pursuant to this Agreement that is marked as confidential or that would, due to the nature of the information or the circumstances of disclosure, be recognized as confidential. The Confidential Information of Transactility (whether or not marked) includes, but is not limited to, the terms of this Agreement; the source code and Documentation for the Software; and Transactility's pricing, sales and training materials and procedures. Confidential Information does not include information that the receiving party can show: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a receiving party from a third party without breach of any obligation of confidentiality; or (c) was previously known by the receiving party as shown by its written records.
- (b) Nondisclosure Obligations. A receiving party agrees: (a) to hold the disclosing party's Confidential Information in confidence; and (b) except as expressly authorized by this Agreement, not to, directly or indirectly, use or disclose, the disclosing party's Confidential Information. Customer agrees that Transactility may: (a) derive and compile from the provision of the Services certain aggregate and analytical data (the “**Analytical Data**”), which shall not contain any Customer-specific or any individually identifying information, and (b) use the Analytical Data for improving Transactility's products and services and to create new products and services. In addition, a receiving party may disclose Confidential Information of the disclosing party as required by law, applicable regulatory authorities, or court order; in such event, such party shall use its best efforts to inform the other party prior to any such required disclosure.
- (c) Injunctions. Each party acknowledges and agrees that any violation of this Section 8 may cause the disclosing party irreparable injury for which the disclosing party would have no adequate remedy at law, and that the disclosing party shall be entitled to preliminary and other injunctive relief against the receiving party for any such violation. Such injunctive relief shall be in addition to, and not in limitation of, all other remedies or rights that disclosing party shall have at law or in equity.

9. Warranties and Disclaimers

- (a) Each party warrants that it has full authority to enter into this Agreement and is not bound by any contractual or legal restrictions from fulfilling its obligations hereunder. Transactility warrants that it will provide Services in a professional and workmanlike manner, using qualified personnel.
- (b) Customer represents and warrants that all data, information and other content made available to Transactility as part of any Services (“**Customer Data**”): (i) is owned by Customer, or Customer has the full right to provide the Customer Data for such processing; (ii) does not infringe or misappropriate any copyright, trademark, trade secret or other intellectual property right; (iii) does not violate any person's right of privacy; and (iv) does not contain any unlawful material. Customer is solely responsible for the accuracy and sufficiency of the Customer Data and acknowledges that Transactility has no responsibility or intent to review or monitor any Customer Data.

(c) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SOFTWARE AND SERVICES PROVIDED BY TRANSACTILITY IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED “AS-IS,” “WITH ALL FAULTS” AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AS WELL AS ANY WARRANTIES ARISING FROM USAGE IN THE TRADE OR A COURSE OF DEALING BETWEEN THE PARTIES ARE HEREBY DISCLAIMED. Transactility does not guarantee that the Software will be error-free or uninterrupted. Transactility will use reasonable good faith efforts to ensure that Software does not contain any code that weakens the security of the Software, including computer viruses, worms, Trojan horses, and all other forms of malicious code. Customer agrees that: (a) the Software is strictly a tool to be used in conjunction with good and reasonable business judgment by competent Customer personnel; (b) successful use of the Software and Services is dependent on Customer's use of proper procedures and systems, and (c) Customer is solely responsible for any use made by Customer of the output of the Software or any reliance therein.

(d) Certain Software and Services may integrate or interoperate with software or services provided by third-party vendors. Customer is solely responsible for obtaining accounts and agreements as required by such third-party vendors for use of their products and services. Transactility makes no representations or warranties with respect to the reliability, sufficiency, operations, or information security policies and practices of such third-party vendors. Changes to integration and/or interoperability specifications/software by third-party vendors may cause integrations to cease working and are not the responsibility of Transactility.

(e) Certain Software may include open source components, as identified in the Documentation or the Commercial Terms Schedule. Customer agrees that such open source software is provided pursuant to the applicable open source licenses identified in such Documentation or Commercial Terms Schedule, and not under the terms of this Agreement.

10. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO RECOVER FROM THE OTHER PARTY ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR DAMAGES BASED ON ANY LOST SALES, LOST PROFITS OR DATA, EVEN IF SUCH PARTY IS AWARE THAT ANY SUCH DAMAGES MAY OCCUR. CUSTOMER AGREES THAT ANY LIABILITY OF TRANSACTILITY RELATED TO THIS AGREEMENT OR TO THE SOFTWARE OR SERVICES SHALL BE LIMITED TO THE AMOUNT OF FEES ACTUALLY RECEIVED BY TRANSACTILITY FROM CUSTOMER UNDER APPLICABLE COMMERCIAL TERMS SCHEDULE IN THE YEAR IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY. The limitations in this Section 10 shall not apply to any infringement by a party of the other party's intellectual property rights.

11. Indemnification

(a) Transactility shall: (a) defend Customer from and against any and all third party claims, actions, suits, demands or proceeding (“**Claims**”) brought against Customer alleging that Customer's use of the Software in accordance with this Agreement infringes any copyright, patent or other intellectual property right enforceable in the United States, and (b) indemnify and hold harmless Customer against any damages awarded to the third party bringing the Claim or any settlement amount approved by Transactility in writing (not to be unreasonably withheld) and paid to the third party bringing the Claim to settle the Claim. Notwithstanding anything to the contrary in this Agreement, Transactility shall have no obligations to Customer pursuant to this Section with respect to any infringement or alleged infringement resulting or arising from (1) any modifications to an Software made by any person or entity other than Transactility, (2) any use of the Software by

Customer beyond the scope of the express licenses granted in this Agreement, (3) any use of the Software in combination with other service, software, hardware or data, (4) Transactility's compliance with Customer's request for changes to the Software or with Customer's designs, specifications or instructions, or (5) failure of the Customer to use the current version of the Software.

(b) Customer shall (a) defend Transactility, and its directors, officers, affiliates, employees and permitted assigns, from and against any and all Claims brought against Transactility arising from or related to Customer Data, and (b) indemnify and hold harmless Transactility against any damages awarded to the third party bringing the Claim or any settlement amount approved by Customer in writing (not to be unreasonably withheld) and paid to the third party bringing the Claim to settle the Claim.

(c) The indemnifying party's obligations under this Section are conditioned upon (i) the indemnifying party being notified promptly in writing of such Claim, (ii) the indemnifying party having the exclusive right to control the defense and/or settlement of the Claim, and (iii) the indemnified party providing all reasonable assistance (at the indemnifying party's request and expense) in the defense of the Claim. The indemnified party may, at its own expense, engage separate counsel to participate in the defense of the Claim, subject to the indemnifying party's right to control the defense and settlement.

(d) In the event of a third-party Claim or threat thereof under Section 11(a), Transactility may (i) procure for Customer the right to continue to use the allegedly infringing Software, or (ii) replace or modify the Software with functionally equivalent software. If neither subpart (i) nor (ii) of this paragraph is commercially reasonable or practical in the reasonable opinion of Transactility, Transactility may terminate this Agreement with respect to the allegedly infringing Software, and the license thereto granted hereunder, upon fifteen (15) days written notice to Customer. In the event of such termination, Transactility shall refund to Customer a pro-rata amount of the license or subscription fee paid in advance to Transactility by Customer for use of the allegedly infringing Software not provided or performed as of the date of termination (depreciated on a five (5) year straight line basis for any perpetual license fee paid).

12. Miscellaneous

(a) **Assignment.** The License and this Agreement may not be assigned by Customer without Transactility's prior written consent. Transactility may assign this Agreement to an affiliated company or to its successor as part of the sale of all or substantially all of its business, whether by sale of assets, sale of stock, merger, or otherwise.

(b) **Dispute Resolution.** This Agreement shall be governed by the internal laws of the State of Delaware, without regard to any conflict of laws provisions. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties agree that the location for all such arbitrations shall be in Miami, Florida or in Raleigh, North Carolina, in Transactility's discretion.

(c) **Compliance with Laws.** Customer agrees to comply with all applicable laws and regulations with respect to the Software, including all export and re-export control laws and regulations.

(d) **Independent Contractors.** The parties are and intend to be independent contractors. Transactility agrees that neither it, its employees nor its contractors shall be considered as having an employee status with Customer. No form of joint employer, joint venture, partnership, or similar relationship between the parties is intended or hereby created.

(e) **Non-solicitation.** The parties to this Agreement have invested substantial resources to hire and train staff. Each party agrees that, while this Agreement is in effect, and for twelve (12) months thereafter, neither party shall solicit or hire any employee or contractor of the other involved in providing or using the Software or Services, to work for its organization as an employee, consultant, or in any indirect capacity, except with the other party's prior written consent.

(f) **Referral.** Customer agrees that Transactility may include Customer's name and logo in a list or display of clients of Transactility on Transactility's website and in its marketing literature.

(g) **Entire Agreement.** This Agreement, along with all Commercial Terms Schedules, sets forth the entire agreement and understanding between the parties and supersedes and cancels all previous negotiations, agreements and commitments, whether oral or in writing, with respect to the subject matter described herein. This Agreement may be modified only by a written instrument signed by an authorized representative of each party. In the event of any conflict between the terms of this Agreement and the terms of any Commercial Terms Schedule, the terms of the Commercial Terms Schedule shall control.

(h) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which together constitute one instrument.

(i) **Force Majeure.** Neither party shall be liable for any failure or delay in the performance of its obligations (except for payment obligations hereunder) due to causes beyond the reasonable control of the party affected, including but not limited to war, sabotage, insurrection, riot or other act of civil disobedience, act of any government affecting the terms hereof, acts of terrorism, accident, fire, explosion, flood, hurricane, severe weather or other act of God, pandemic, and failure of telecommunication or internet service provider s.

(j)

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives:

Customer Signature		Transactility Signature	
Address:		Address:	
Name:		Name:	
Title:		Title:	
Date:		Date:	