

## CUSTOMER TERMS OF USE

These Customer Terms of Use are entered into by and between Revel Systems, Inc., a Delaware corporation with offices at 600 Peachtree Street, Suite 3800, Atlanta, Georgia 30308 and/or its Affiliates and subsidiaries (“**Revel**”), and (“**Customer**”) and are effective and binding on the Customer as of the date the Customer executes a New Customer Onboarding Form with Revel (the “**Effective Date**”) (“**Agreement**”). Capitalized terms have the meanings in Section 10 (Definitions) or elsewhere in this Agreement. To the extent of any conflict between a term or condition of this Agreement and a term or condition of any other agreement related to Customer’s use of the Revel POS Platform (as defined below) or Software (as defined below) this Agreement shall govern.

Revel offers through certain authorized resellers the Revel POS Platform integrated point of sale solutions consisting of a subscription Service, Software, API/XML and Hardware and certain related Professional Services, and Customer desires to utilize the Revel POS Platform and acquire certain Revel products and services from an authorized reseller. In that regard, Customer agrees to act in accordance with the terms and conditions set forth in this Agreement.

In consideration of the mutual promises and agreements contained herein, the sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. Provision of the Service and Products.

**1.1 Customer Orders.** Customer orders for the Revel POS Platform, Service, Software, API/XML and Hardware (excluding Third Party Hardware), as applicable, will be made pursuant to Customer’s agreement with its reseller or as otherwise agreed in writing between Customer and Revel.

**1.2 License Grant.** Subject to the terms and conditions of this Agreement, Revel hereby grants Customer a limited, non-exclusive, non-transferable (except in connection with an assignment of this Agreement pursuant to Section 9.7 (Assignment)), non-sublicensable right to access and use the Service and Software (in object code form only), in each case that have been validly ordered by Customer, solely for the Business Purposes of Customer at Locations and during the Term. The Service and Software shall be made available to Customer in accordance with the Documentation. The API/XML will be licensed to Customer if specified in the applicable Customer agreement. Customer’s access to and use of the API/XML are further subject to the Additional API/XML Terms.

**1.3 License Restrictions.** Customer shall not (a) modify, copy or create any derivative works based on the Service, Software or API/XML; (b) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer in a service bureau, or otherwise make the Service, Software or API/XML available to any third party, other than to Authorized Parties as expressly permitted herein; (c) reverse engineer or decompile any portion of the Service, Software or API/XML, including but not limited to, any software utilized by Revel in the provision of the Service; (d) access the Service, Software or API/XML

in order to build any commercially available product or service; or (e) copy any features, functions, integrations, interfaces or graphics of the Service, Software or API/XML; or create internet links to the Service or frame or mirror the Service on any other server or wireless or internet-based device.

To the extent that Revel, at its sole discretion, develops and makes Improvements (as defined herein) available during the Term, Revel shall also provide access to any such Improvements, whereupon such Improvements will be incorporated in the license to the Service and/or Software and/or API/XML granted herein (as applicable). If an Improvement to the Software is made available to Customer, Customer shall update its Software in order for such Software to operate and perform in a manner consistent with the Documentation. Customer’s failure to update Software accordingly may prevent or interfere with Customer’s use of the Service, Software, API/XML, and/or Hardware. For the avoidance of doubt, this Agreement does not entitle Customer to New Products.

**1.4 Service and Product Changes.** Revel reserves the right to discontinue, modify and/or replace any Service, Software, API/XML or Hardware, subject to thirty (30) days’ prior written notice (electronic notice acceptable).

### 2. Customer’s Use of the Service and Products.

**2.1 Customer Obligations.** Customer may enable access to the Service, Software, API/XML and Hardware for use only by Authorized Parties solely for the Business Purposes of Customer at Locations in accordance with the Documentation; provided,

however, Customer may enable access to the consumer-facing functionality and features of the Service, Software and Hardware for use by Consumers. Customer is responsible for all Authorized Party and Consumer use of the Service, Software, API/XML and Hardware and compliance with this Agreement, as well as restricting access by any individual who is no longer an Authorized Party. Customer shall: (a) have sole responsibility for the accuracy, quality, and legality of all Customer Data; (b) grant User IDs to individual named Authorized Parties; (c) require that all Authorized Parties keep User ID and password information strictly confidential and not share such information with any third party; (d) prevent unauthorized access to, or use of, the Service, Software, API/XML and Hardware, and notify Revel promptly of any such unauthorized access or use (including any unauthorized access or use caused by misuse or misappropriation of User IDs or passwords); and (e) comply with its obligations under all Laws applicable to Customer's use of the Service, Software, API/XML and Hardware, including all such Laws related to privacy, data security, and data protection. Customer shall not: (i) use the Service, Software, API/XML or Hardware in violation of applicable Laws; (ii) in connection with the Service, Software, API/XML or Hardware, send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights; (iii) send or store Malicious Code in connection with the Service, Software, API/XML or Hardware; (iv) interfere with or disrupt performance of the Service, Software, API/XML or the data contained therein; or (v) attempt to gain access to the Service, Software, API/XML or Hardware or their related systems or networks in a manner not set forth in the Documentation. Customer shall be liable for the acts and omissions of all Authorized Parties and Consumers relating to this Agreement.

**2.2 Dedicated Use.** The Service and Software are intended to operate together with the Hardware to provide a comprehensive point of sale solution. Customer agrees to use the Hardware solely in connection with the Service and Software in accordance with the Documentation, and shall not attempt to reconfigure or use the Hardware for any other purposes (for example, Customer shall ensure that its employees do not install apps on the Revel iPads, do not use Revel iPads to browse the internet, and do not attempt to reconfigure point of sale peripherals to perform other functions or connect to other devices).

**2.3 Restrictions.** Customer shall not, without Revel's prior written consent, use, duplicate, or

disclose any data or information relating to the Service, Software, API/XML or Hardware that is made available by Revel in connection with this Agreement, including any information related to the features, functionality, performance, pricing, application, or construction of any portion of the Revel POS Platform. Customer shall not use the Service, Software, API/XML or Hardware for benchmarking or testing performance, or for enhancing any products or services that relate to point of sale, payment processing, or commerce data. Customer shall only use the Service, Software, API/XML and Hardware for Customer's Business Purposes at the Locations, and for no other purpose and at no other location; provided that, following the expiration or termination of this Agreement, Customer shall be permitted to retain and use without restriction the Third Party Hardware and any Purchased Hardware for which Customer has made full payment, provided that Customer must cease using the Third Party Hardware and Purchased Hardware as part of the Revel POS Platform and disable access to and/or de-install the Software, API/XMLs and Service.

**2.4 POS Transactions.** The Revel POS Platform is designed to give Customer flexibility in configuring its point of sale systems. Consequently, it is critical that Customer understands how to configure and use Customer's POS Terminals and Back End portal, and that Customer ensures that transactions are properly processed and credited to Customer's bank, loyalty and other relevant accounts. Customer acknowledges that it is Customer's obligation to seek assistance if Customer has any questions about the processing and crediting of Customer's point of sale transactions or if Customer needs assistance with the configuration and operation of the Revel POS Platform or third party products, software and services, and Revel will have no liability as a result of Customer's failure to do so. Customer further acknowledges that it is Customer's obligation to ensure on an ongoing basis that payments, loyalty transactions and any other transactions running through the Revel POS Platform are processed properly, and that the respective currency, credit, loyalty points, or other applicable transaction proceeds are accurately deposited in Customer's relevant accounts, and Revel will have no liability as a result of Customer's failure to do so. In that regard, Customer will perform a minimum of three (3) test transactions (e.g. \$0.01 transactions) before going live (e.g. into production) to ensure that transactions processed on the Revel POS Platform are properly credited to Customer's account (the "**Test Transactions**"). Customer shall retain documentation of all Test Transactions during the Term of this Agreement and

for one (1) year thereafter and will provide such documentation to Revel upon request. Further, Customer agrees that, on at least a daily basis (and more often if reasonably prudent under the circumstances), Customer shall check, validate and ensure that (a) all proceeds from Customer's point of sale transactions were deposited in Customer's accounts timely and in full (net of any charges that Customer has agreed to pay to payment processors); (b) data relating to loyalty, incentive or other similar programs was processed properly; and (c) point of sale transactions are batched daily to fully reconcile payment details with Customer's payment processing vendors, payment gateway and financial institutions. Customer assumes the responsibility to train and instruct the Authorized Parties regarding all of the foregoing Customer obligations and Revel will have no liability as a result of Customer's failure to do so.

**2.5 Internet Access.** Customer acknowledges that access to and use of the full functionality of the Revel POS Platform requires a high-speed internet connection and that Customer is responsible for procuring and maintaining the network connections that connect the Hardware and Software to the Service. If Customer uses any internet wireless router or other network access technology or network-enabled devices provided by Revel, Customer agrees that Revel will have the right (although not the obligation) to encrypt and filter internet traffic for data security purposes and to otherwise manage or modify internet data transmissions.

### **3. Proprietary Rights; Customer Data.**

**3.1 Ownership and Reservation of Rights to Revel Intellectual Property.** As between Revel and Customer, Revel, its Affiliates or its licensors own all right, title and interest in and to the Revel POS Platform, Service, Software, API/XML, Work Product, and all related technology and Intellectual Property Rights. Customer agrees that all Work Product will be the property of Revel and hereby assigns and agrees to assign all its rights in any Work Product and in all related patents, patent applications, copyrights, mask work rights, trademarks, trade secrets, rights of priority and other proprietary rights to Revel. Customer acknowledges that Revel, in its sole discretion, will have the right to license the Work Product or any portion thereof, or incorporate the Work Product or any portion thereof into products or services, for use by other customers of Revel. At Revel's request and expense, Customer shall assist and cooperate with Revel in all reasonable respects and shall execute documents, give testimony and take further acts as reasonably requested by Revel to

acquire, transfer, maintain and enforce patent, copyright, trademark, mask work, trade secret and other legal protection for any Work Product. Subject to the limited rights expressly granted hereunder, Revel reserves all rights, title and interest in and to the Revel POS Platform, Service, Software, API/XML and Work Product, including all related technology and Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth in this Agreement.

**3.2 Customer Feedback.** Customer and Authorized Parties may elect to provide Revel with suggestions, enhancement requests, recommendations and other feedback concerning the Service, Software, API/XML, Hardware, or Professional Services (the "**Customer Feedback**"). Customer hereby assigns and agrees to assign all Customer Feedback to Revel without lien or encumbrance and agrees that Customer Feedback will be the sole property of Revel and that Revel may use Customer Feedback in its discretion without obligation to Customer. Revel has no obligation to make Customer Feedback an Improvement.

**3.3 Ownership of Customer Data.** As between Revel and Customer, Customer owns the Customer Data. Revel will have, and Customer hereby grants and agrees to grant to Revel, a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use the Customer Data to configure and/or provide the Service, Software, API/XML, and Professional Services to Customer, or to prevent or address service or technical problems, in accordance with this Agreement and the Documentation, or otherwise in accordance with Customer's instructions.

**3.4 Permitted Use of Customer Data.** Notwithstanding the other provisions of this Agreement, Revel shall also have a non-exclusive, fully paid, royalty-free, transferable, perpetual, irrevocable worldwide, right and license to use, access, make, have made, use, copy, distribute, maintain, modify, enhance, create derivative works of, aggregate, and re-purpose Customer Data for the purposes (including commercial purposes) of analyzing activity, modeling, industry benchmarking, marketing, developing industry expertise and making product/service improvements. In any such use of Customer's Data, Revel will ensure that only aggregate information is utilized, and in all cases all Customer Data will be anonymized.

**3.5 Customer Data Storage.** Revel will store Customer Data at no charge for a period of twelve

(12) months from the execution date of Customer's Initial Order Form Term for monthly Software subscription services. Thereafter, the Customer will be billed at Revel's then current rate for Customer Data storage unless Customer provides Revel with at least thirty (30) days advance written notice that it no longer wants Revel to maintain its Customer Data storage database.

**3.6 Usage Data.** Revel may collect certain information in connection with Customer's access to or use of the Service, such as access records, date and time stamps, transaction and activity records, and system performance data ("**Usage Data**"). Revel may use Usage Data to, among other things, deliver and manage its products and services, perform maintenance and support, and develop, test, and improve the Service and other Revel products and services, and generate statistical data about usage of its products and services. As between Revel and Customer, Revel owns the Usage Data.

**3.7 Data Processing Addendum.** Terms applicable to Personal Data are set forth in the Data Processing Addendum.

**3.8 Revel Privacy Policy.** Customer is hereby agreeing to the Revel Privacy Policy, as may be updated or amended from time to time, located at <https://revelsystems.com/privacy/>.

#### **4. Third Party Payment Processors.**

**4.1 Payment Processing.** The Revel POS Platform is designed to integrate with third party payment processors. Customer shall utilize a payment gateway provider and a payment processing services provider designated by Revel (Revel in no way provides payment processing or gateway services). To the extent Customer is required to enter into a separate agreement with any such third party payment gateway or payment processing services provider, or is required to agree to such third party payment gateway or payment processing services provider's terms and conditions as set forth in an agreement with Revel, Customer hereby agrees to do so. If Customer is utilizing an integrated payments solution through Revel, then Customer is hereby agreeing to the applicable integrated payment solutions' terms and conditions found at [www.revelsystems.com/payment-terms](http://www.revelsystems.com/payment-terms), as may be updated from time to time.

**4.2 Always-On Mode.** The Revel POS Platform may be configured to operate in an offline mode, so that Customer's point of sale terminals may continue to process credit cards, loyalty cards and other remote

server-based transactions even if the connection to the internet or to the payment processor is temporarily discontinued ("**Offline Transactions**"). While in offline mode, Offline Transactions are processed locally, without receiving a final confirmation from a remote server that the respective transactions were in fact completed. Consequently, with Offline Transactions Customer assumes the risk and will be solely responsible if credit card transactions processed offline are not approved if the credit cards are declined by a payment processor or financial institution when the connection with the remote servers is reestablished. Customer agrees to verify that the Revel POS Platform is properly configured to process credit cards and other transactions that require remote server responses, including by verifying at least once a day (and more often if reasonably prudent under the circumstances) that Customer's account is properly credited for the full amounts of the purchase transaction conducted using the Revel POS Platform. Customer hereby assumes all liability and responsibility for training and instructing Authorized Parties to verify multiple times each day that the Revel POS Platform is not operating inadvertently in an offline mode, that the connection to the payment processor is and remains properly configured, and that any Offline Transactions are accurately processed when the connection to the remote servers is reestablished.

#### **5. Confidentiality.**

**5.1 Confidentiality.** A party shall not disclose or use any Confidential Information of the other party except as reasonably necessary to perform its obligations or exercise its rights pursuant to this Agreement except with the other party's prior written permission.

If the Customer is a Franchisor (or any other corporate entity) that plans to request access to view all Services, Software, API/XML, Hardware, any component of the Revel POS Platform ordered by Franchisees (or any other related corporate entity) or Franchisees' (or any other related corporate entities') Customer Data or Customer Materials then Franchisor (or such other corporate entity) is hereby representing that it has the legal right to obtain such access. If the Customer is a Franchisee (or a corporate entity whose information is legally subject to the review of Franchisor or another related corporate entity) then it is hereby agreeing that Franchisor (or any other such related corporate entity) may have access to all Services, Software, API/XML, Hardware, any component of the Revel POS Platform ordered by it or its Customer Data or Customer Materials, as well as any other data contained in the

Revel POS Platform through the Revel POS Platform.

**5.2 Protection.** Each party agrees to protect the Confidential Information of the other party in the same manner that it protects its own Confidential Information of like kind, but in no event using less than a reasonable standard of care.

**5.3 Compelled Disclosure.** A disclosure by one party of Confidential Information of the other party to the extent required by Law will not be considered a breach of this Agreement, provided the party so compelled promptly provides the other party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

**5.4 Remedies.** If a party discloses or uses (or threatens to disclose or use) any Confidential Information of the other party in breach of confidentiality protections hereunder, the other party will have the right, in addition to any other remedies available, to seek injunctive relief to enjoin such acts without the necessity of posting a bond, it being acknowledged by the parties that any other available remedies are inadequate.

**5.5 Exclusions.** Confidential Information will not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the other party; (b) was known to a party prior to its disclosure by the other party without breach of any obligation owed to the other party, as evidenced by contemporaneous written records; (c) was independently developed by a party without breach of any obligation owed to the other party, as evidenced by contemporaneous written records; or (d) is received from a third party without breach of any obligation owed to the other party.

## **6. Indemnification.**

**6.1 Indemnification by Customer.** Customer shall indemnify and hold harmless, and at Revel's request defend, Revel and its Affiliates, successors and assigns (and its and their officers, directors, employees, sublicensees, customers and agents) from and against any and all claims, losses, liabilities, damages, settlements, expenses and costs (including, without limitation, attorneys' fees and court costs) which arise out of or relate to: (a) any breach (or claim or threat thereof that, if true, would be a breach) of this Agreement by Customer; (b) Customer Data, including any third party claim alleging that Customer Data infringe or misappropriate the rights of a third

party or violate any Law; and (c) any violation of Law by Customer.

**6.2 Procedures.** Revel shall give Customer prompt notice of any claim to which Customer's indemnification obligation applies; provided, however, that the failure to give such notice shall not relieve Customer of its obligations under Section 6.1 (Indemnification by Customer) except to the extent that Customer was actually and materially prejudiced by such failure. Revel may, at its option and expense, participate and appear on an equal footing with Customer in the defense of any indemnification claim that is conducted by Customer as set forth herein. Customer may not settle any claim without the prior written approval of Revel.

## **7. Limitation of Liability.**

**7.1 Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL REVEL'S (OR REVEL'S THIRD PARTY LICENSORS' OR SUBCONTRACTORS') TOTAL AND AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AGGREGATE AMOUNT OF FEES PAID BY CUSTOMER DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD FOR THE SERVICE, SOFTWARE, HARDWARE, API/XML, REVEL POS PLATFORM OR PROFESSIONAL SERVICES FROM WHICH THE CLAIM AROSE. THE FOREGOING LIMITATION IS CUMULATIVE, WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT, AND THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THAT LIMIT.

**7.2 Exclusion of Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL REVEL (OR REVEL'S THIRD PARTY LICENSORS OR SUBCONTRACTORS) HAVE ANY LIABILITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, OR FOR ANY LOST PROFITS, LOSS OF USE, LOSS OF DATA, COST OF DATA RECONSTRUCTION OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, SOFTWARE, HARDWARE,

API/XML, REVEL POS PLATFORM OR PROFESSIONAL SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF REVEL OR REVEL'S LICENSORS OR SUBCONTRACTORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

## **8. Term, Termination and Suspension.**

**Term of Agreement.** The term of this Agreement shall be for so long as Customer has a valid and binding contract with the applicable authorized Revel re-seller, but in no event less than thirty-six (36) months from the date upon which Revel first bills the reseller for monthly Software and/or Revel POS Platform subscription services (and if Customer is not ordering any such subscription services, then from the date on which Revel first otherwise bills reseller) or until such time as this Agreement is otherwise terminated pursuant to its terms (the "**Term**"). Provided, however, that if Customer subscribes to Revel Guard™ XT through its agreement with Reseller, in no event will any subscription to Revel Guard XT exceed the time period during which Revel has the legal right to continue offering Revel Guard XT and Customer understands and agrees that Revel has the right to terminate Customer's access to Revel Guard XT upon the expiration and/or termination of such right.

**8.1 Termination.** Either party may terminate this Agreement (a) upon thirty (30) days prior written notice to the other party of a material breach of this Agreement by the other party if such breach remains uncured at the expiration of such notice period; or (b) immediately in the event the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**8.2 Retrieval of Customer Data.** Upon written request by Customer made within thirty days after any expiration or termination of this Agreement and/or any Location Order Form, Revel shall make Customer Data available to Customer through the Service in Revel's standard format on a limited basis solely for purposes of Customer retrieving Customer Data during such thirty-day period for a fee of five hundred ninety-nine dollars (\$599) or the Customer's monthly recurring revenue, whichever is greater. If Customer desires Customer Data to be provided in a format other than Revel's standard format, the parties may agree that Revel will assist in providing the requested format pursuant to a SOW in exchange for additional fees for such assistance. After such thirty-day period, Revel

shall have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data.

If Customer requests retrieval of Customer Data after the expiration of the time period set forth in this Section 8.3, then, if Revel, in its discretion has maintained the Customer Data, Revel may agree to provide the Customer Data to Customer in Revel's standard format pursuant to a Sales Agreement or SOW for a fee. The Customer understands and agrees that the fee may vary based on time elapsed since termination of this Agreement. Further, if Customer desires Customer Data to be provided in a format other than Revel's standard format, the parties may agree that Revel will assist in providing the requested format pursuant to a Sales Agreement or SOW in exchange for fees for such assistance.

**8.3 Effect of Termination.** Upon any termination of this Agreement, Customer shall, as of the date of termination, immediately cease accessing and utilizing the Service, Software, Revel POS Platform, the API/XML, and Revel Confidential Information. Customer will return all Revel Confidential Information, including but not limited to, any Documentation, at Customer's expense, within fifteen (15) days of termination. Upon early termination by Customer or termination by Revel for other material breach, Customer shall also pay a minimum of the sum of three (3) months of Customer's monthly subscription fees currently then in effect and shall forfeit any deposits. The Customer and Revel acknowledge and agree that the sums payable under the foregoing sentence shall constitute liquidated damages and not penalties and are in addition to all other rights of Revel (including, but not limited to, pursuit of any additional unpaid monthly fees for the remainder of the Term).

Those provisions that by their express terms survive or which by their nature should survive, will survive the expiration or any termination of this Agreement. Termination of this Agreement by either party will not act as a waiver of any breach of this Agreement and will not act as a release of either party from any liability for breach of such party's obligations under this Agreement. Neither party will be liable to the other party for damages of any kind solely as a result of terminating this Agreement in accordance with its terms, and termination of this Agreement by a party will be without prejudice to any other right or remedy of such party under this Agreement or applicable Law.

**8.4 Suspension of Service.** In addition to any other rights or remedies it may have under this

Agreement or by Law, Revel may immediately suspend (permanently if necessary, which shall result in termination of this Agreement) provision of the Service without liability to Customer (a) if Customer breaches Section 1.3, Section 2.1 or Section 2.3; (b) to avoid harm or liability to Revel or its other customers, including in the case of denial of service attacks or other disruptions; or (c) if required by Law or requested by a governmental authority. Customer shall remain liable for any fees and other amounts payable during any period of suspension.

## **9. General Provisions.**

**9.1 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. The relationship of the parties described in this Agreement is non-exclusive. There are no third-party beneficiaries to this Agreement.

**9.2 Non-solicitation.** During the Term of this Agreement and for a period of twelve months after termination or expiration of this Agreement or any Order Form or SOW, Customer shall not directly or indirectly solicit as an employee or independent contractor any employee working for Revel. The parties acknowledge this provision does not apply to responding to unsolicited applications, or responding to unprompted responses to general advertisements, or independently (without direction or advice) presented by an independent recruiting firm.

**9.3 Subcontracting.** Revel may draw on the resources of (and subcontract to) its Affiliates and third party contractors and subcontractors, within or outside of the United States (each, a “**Revel Vendor**”) for internal, administrative and compliance purposes or in connection with the hosting or provision of the Service and other products and services to be provided by Revel pursuant to this Agreement. Customer agrees that Revel may provide information, data and materials that Revel receives in connection with this Agreement (including Customer Data) to the Revel Vendors for such purposes.

**9.4 Publicity.** Customer agrees that Revel may use Customer’s name and logo in lists of customers, on promotional and marketing materials and on its website. Revel agrees that, subject to Revel’s written consent in each instance, Customer may use Revel’s name and logo to identify Revel as Customer’s point of sale solution provider on promotional and marketing materials and on its website.

**9.5 Notices.** All notices under this Agreement will be in writing and will be deemed to have been given upon: (a) personal delivery; (b) the third business day after first class mailing; or (c) the second business day after sending by facsimile with telephonic confirmation of receipt. Notices to Revel will be addressed to the attention of the Office of the General Counsel to the address in the introductory paragraph of this Agreement. Notices to Customer will be addressed to the Customer’s reseller for delivery to Customer. Each party may modify its recipient and address of notices by providing notice pursuant to this Agreement.

**9.6 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at Law or in equity.

**9.7 Force Majeure.** Neither party will be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that party’s reasonable control, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems, computer attacks or malicious acts, such as attacks on or through the internet, any internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused. For the avoidance of doubt, COVID-19 related matters may not be declared as a Force Majeure event under this Agreement.

**9.8 Assignment.** Revel may assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of Law or otherwise, this Agreement and any of its rights or obligations of this Agreement, but Customer shall not and shall not have the right to assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of Law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Revel. Any attempt by Customer to assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of Law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Revel

will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

#### **9.9 Governing Law; Waiver of Jury Trial.**

This Agreement will be governed exclusively by the internal laws of the State of Georgia, USA, without regard to its conflicts of laws rules. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement and irrevocably consents to the personal jurisdiction and venue of any state or federal court located in Atlanta, GA, USA. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

**9.10 Export.** Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Service, Software, API/XML, Hardware and Revel POS Platform. Without limiting the generality of the foregoing, Customer shall not make the Service, Software, API/XML, Revel POS Platform, Hardware or any deliverable available to any person or entity that: (a) is located in a country that is subject to a U.S. government embargo; (b) is listed on any U.S. government list of prohibited or restricted parties; or (c) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

**9.11 Modifications.** From time to time, Revel may modify the URL Terms and such modifications will become effective for Customer upon renewal of its then-current subscription to the Service; provided that Revel may specify an earlier effective date if Revel believes the change is required to comply with Law. Customer may be required to electronically accept or otherwise agree to the modified URL Terms before renewing a subscription, and in any event, continued use of the Service after an updated version of the URL Terms goes into effect will constitute Customer's acceptance of the updated URL Terms. Except as set forth above, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.

**9.12 Miscellaneous.** This Agreement, including all URL Terms, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. If the application of any provision of this

Agreement to any particular facts or circumstances will be held to be invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, then (a) the validity and enforceability of such provision as applied to any other particular facts or circumstances and the validity of other provisions of this Agreement will not in any way be affected or impaired thereby and (b) such provision will be enforced to the maximum extent possible so as to effect the intent of the parties and reformed without further action by the parties to the extent necessary to make such provision valid and enforceable. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void. Section headings are for convenience only and are not intended to affect the meaning or interpretation of this Agreement. A reference to a Section, Exhibit or Attachment which does not specify a particular document is to the relevant Section Exhibit or Attachment of the document containing the reference. The words "hereby," "herein," "hereof," "hereunder" or other words of similar meaning refer to the entire document in which they are contained, and the word "or" is not exclusive and the words "including" or "include" are not limiting. This Agreement may be executed in counterparts, which taken together will form one binding legal instrument. The parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this agreement will be legally binding with the same force and effect as manually executed signatures.

#### **10. Definitions.**

**"Additional API/XML Terms"** means the terms available at [www.revelsystems.com/APITerms/](http://www.revelsystems.com/APITerms/) (or successor location designated by Revel), as such terms may be updated by Revel from time to time.

**"Affiliate"** means any entity which directly or indirectly controls, is controlled by, or is under common control by either party. For purposes of the preceding sentence, "control" means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

**"Agreement"** means this Customer Agreement, including the URL Terms and attachments thereto, and any fully executed Statements of Work.

**"API"** means Revel's application programming

interface designed to facilitate the transmission of data (including Customer Data) to and/or from the Service and Software.

**“Authorized Parties”** means Customer’s employees authorized to access and use the Service, Software, API/XML and Hardware through the Service’s security designation.

**“Business Purposes”** means the facilitation of point of sale processes, customer experience, customer relationship management, and enterprise, inventory, employee and other internal management functions.

**“Confidential Information”** means (a) in the case of Revel, the Revel POS Platform, the Service (including any software (source code and object code) utilized by Revel in the provision of the Revel POS Platform or Service), the Software (source code and object code), API/XML and Work Product, and any improvements, modifications or extensions made to any of the foregoing; (b) in the case of Customer, Customer Data; and (c) in the case of each party, the party’s business or technical information, including training materials, information relating to software plans, designs, costs, prices, finances, marketing plans, business opportunities, personnel, research, development or know-how that is designated by the disclosing party as “confidential” or “proprietary” or the receiving party knows or should reasonably know is confidential or proprietary in light of the nature of the information or the circumstances of its disclosure, and the terms, conditions and pricing of this Agreement (but not its existence or parties).

**“Customer”** has the meaning set forth in the introductory paragraph of this Agreement.

**“Customer Data”** means the electronic or other data or materials submitted by Customer or Authorized Parties to the Service.

**“Customer Feedback”** has the meaning set forth in Section 3.2 (Customer Feedback).

**“Consumer”** means any individual or entity client or customer of Customer.

**“Data Processing Addendum”** means the terms available at [www.revelsystems.com/DPA/](http://www.revelsystems.com/DPA/) (or successor location designated by Revel), as such terms may be updated by Revel from time to time.

**“Documentation”** means Revel’s electronic user manual for the Service and Software, which may be updated by Revel from time to time.

**“Hardware”** means the Purchased Hardware and Third-Party Hardware. “Hardware” may include iPads, other smart tablets, mobile devices, stands, cash drawers, payment card readers, printers, routers, scales and other peripherals.

**“Improvements”** means all improvements, updates, enhancements, error corrections, bug fixes, release notes, upgrades and changes to the Service or Software, as developed by Revel and made generally available for production use without a separate charge to customers.

**“Intellectual Property Rights”** means any and all common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honored or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.

**“Law”** means any local, state, national and/or foreign law, treaties, and/or regulations applicable to a respective party.

**“Locations”** means those Customer locations identified in the applicable Customer agreement.

**“Malicious Code”** means viruses, worms, time bombs, Trojan horses and other malicious code, files, scripts, agents or programs.

**“New Product”** means a release with significant new functionality and any associated user documentation which: (a) Revel in its sole discretion designates as a new product; (b) is made generally commercially available by Revel for a separate charge; and (c) is marketed by Revel as a new product generally to its end user customers even if it is capable of being integrated with the Service or Software.

**“Offline Transactions”** has the meaning set forth in Section 4.2 (Always-On Mode).

**“Professional Services”** means any installation, implementation, training, project management, consulting and other services.

**“Purchased Hardware”** means the hardware identified on the applicable Customer agreement.

**“Revel”** has the meaning set forth in the introductory paragraph of this Agreement.

**“Revel POS Platform”** means the platform

commercialized by Revel to conduct or facilitate point of sale (“**POS**”) transactions and/or electronic commerce transactions, including POS terminals (“**POS Terminals**”), back end technology (including all technology relating to data analytics, data management, data storage, reporting, ERP, CRM, payroll management and other back end portal functionality) (“**Back End**”), API/XML, networking, financial and electronic transaction clearing, omnichannel functionality, and all other aspects of physical and/or electronic commerce transactions processed through POS Terminals and/or the Back End.

“**Service**” means Revel’s subscription-based, software-as-a-service offering provided by Revel in connection with Customer’s use of Software and Hardware, as described in the Documentation. “Service” does not include payment processing or gateway services.

“**Software**” means Revel’s software applications that are installed on the Hardware as described in the Documentation.

“**Term**” has the meaning set forth in Section 8.1 (Term of Agreement).

“**Third Party Hardware**” means the hardware

identified on the applicable Customer agreement as purchased from third party manufacturers or resellers.

“**URL Terms**” means, collectively, the Additional API/XML Terms, Data Processing Addendum and Revel Privacy Policy.

“**Usage Data**” has the meaning set forth in Section 3.5 (Usage Data).

“**User ID**” means the unique user identification for sign in by Authorized Parties to the Revel POS Platform.

“**Work Product**” means all materials, software, tools, data, inventions, works of authorship and other innovations of any kind, including, without limitation, any deliverables, that Revel, or personnel working for or through Revel, may make, conceive, develop or reduce to practice, alone or jointly with others, in the course of performing under this Agreement or as a result of performing under this Agreement, whether or not eligible for patent, copyright, trademark, trade secret or other legal protection.

“**XML**” means Revel's extensible markup language feed designed to facilitate the transmission of Data from Revel's POS Platform to an IP address provided by Customer.