

**TEMPUS® GATEWAY AND TECHNOLOGY SOLUTIONS APPENDIX  
TO TREASURY AGREEMENT (“Tempus Appendix”)**

WHEREAS, on or before the Appendix Effective Date, the undersigned customer (“**Customer**” or “**you**”) and PNC Bank, National Association (“**PNC**” or “**Bank**”) entered into a PNC Treasury Management Services Agreement (as having been amended and/or supplemented from time-to-time, all collectively, the “**Treasury Agreement**”);

WHEREAS, Customer has requested to receive payment gateway and other certain services which are provided by Tempus Technologies, Inc. (“**Tempus**”), a wholly owned subsidiary of Bank. Tempus has agreed to provide such additional services to Customer, subject to the terms and conditions of this Tempus Appendix and the Treasury Agreement; and

NOW THEREFORE, for valuable consideration having been exchanged the parties hereto agree as follows:

***Accession***

- A. Tempus Joinder to Treasury Agreement.** By and through each party’s respective acceptance pursuant to Section 3 of the General Terms and Conditions, below:
- (i) Bank joins Tempus as a party to the Treasury Agreement for the limited purposes described herein;
  - (ii) Tempus accepts such joinder by Bank and accedes to the Treasury Agreement as a party thereto; and
  - (iii) Customer consents to Tempus’ joinder as a party to the Treasury Agreement and expressly acknowledges and agrees its rights and obligations under the Treasury Agreement apply to the Tempus Services and are incorporated into the Tempus Appendix by reference to the same extent as if they were fully set forth therein.
- B. Tempus Appendix.** As of the Appendix Effective Date, the parties agree that the Treasury Agreement is hereby supplemented to include this Tempus Gateway and Technology Solutions Appendix which includes the Tempus General Terms together with the Exhibits, Tempus Schedules and/or other documents attached hereto or otherwise incorporated by reference (collectively, the “**Tempus Appendix**”), specific to the Tempus Services as more fully defined and described herein.
- C. Bank and Tempus Limited Purpose.** Bank is not otherwise a party to the Tempus Appendix insofar as it relates to the Tempus Services or any Additional Tempus Product(s). The provisions of this Tempus Appendix regarding Tempus Services and any Additional Tempus Products shall constitute an agreement exclusively between Customer and Tempus.
- D. Managing Customer; Participating Customer.** For any Participating Customers properly joined under the Treasury Agreement by a Managing Customer, having also been accepted by Bank for its Services thereunder, shall be considered to have acceded to this Tempus Appendix by and through Managing Customer’s signature hereon to the same extent as if such Participating Customer had executed this Tempus Appendix originally. Each such Participating Customer shall be considered a “Customer” under the Tempus Appendix. Managing Customer represents and warrants to Tempus it has provided a copy of the Tempus Appendix and has all necessary powers and authorities from each Participating Customer and under all applicable laws to effectuate such Participating Customer(s) joinder hereto.

***Tempus General Terms and Conditions***

1. **Definitions.** Capitalized terms used in this Tempus Appendix shall have the meanings prescribed in the Glossary attached as Attachment 1 to Tempus General Terms or elsewhere in this Tempus Appendix. All other capitalized terms not otherwise defined in this Tempus Appendix shall have the meanings set forth in the Treasury Agreement.
2. **Scope and Interpretation.**
  - 2.1. **Treasury Agreement.** The Treasury Agreement shall apply to all Tempus Services. For purposes of interpretation and application to this Tempus Appendix, references in the Treasury Agreement to (i) “PNC” shall be construed to mean Tempus, provided for references meaning PNC and its Representatives, PNC shall continue to mean Bank and Tempus shall be deemed included as a Representative of PNC; and (ii) references to “Services” shall be construed to mean Tempus Services.

- 2.2. Tempus General Terms. These Tempus General Terms and Conditions together with its attachments (the “**Tempus General Terms**”) shall apply to all Tempus Services and all Additional Tempus Products.
- 2.3. Exhibits. The documents attached hereto that are specific to each Tempus Service (each an “**Exhibit**”) shall apply to the applicable Tempus Service described therein.
- 2.4. Tempus Schedule. Service descriptions, requirements, and obligations of the parties that are specific to an Additional Tempus Product (“**Tempus Schedule**”) that are that are available on the Services Portal, attached hereto, or subsequently made part of this Tempus Appendix.
- 2.5. Conflicts. To the extent there is a direct conflict between the Tempus General Terms, Exhibit(s), Tempus Schedule(s), and the Treasury Agreement, such conflicts shall be resolved in the following order of precedence: (i) Tempus Schedule, but only as to the specific Additional Tempus Product such Tempus Schedule relates, (ii) the applicable Exhibits, but only as to the specific Tempus Services (including any Additional Tempus Products) such Exhibit relates, (iii) the Tempus General Terms, and (iv) the Treasury Agreement.
- 2.6. PPG. If the Treasury Agreement, or any Service Schedule incorporated therein, includes terms and conditions for PNC Payment Gateway or similarly titled payment gateway processing services (“**PPG**”) such terms and conditions shall be considered superseded in their entirety with the Payment Gateway Exhibit to this Tempus Appendix. Any references to “PPG” or “Payment Gateway” in the Treasury Agreement or any Service Schedule related thereto, shall be construed to mean Tempus’ Payment Gateway. Provided, however, any payment gateway or similar services offered by Bank through PINACLE shall be unaffected by this paragraph and continue to be provided by Bank under the Treasury Agreement.
3. **Acceptance**.
  - 3.1. Customer. Customer shall be deemed to have affirmatively accepted the terms and conditions of the Tempus Appendix and agreed to be bound thereby upon the earlier of (i) Customer’s signature hereto or (ii) Customer’s receipt or use of Tempus Service(s).
  - 3.2. Tempus. Tempus’ acceptance of the Tempus Appendix and agreement to be bound thereby shall be evidenced by Tempus’ provision of Tempus Service(s) to Customer.
  - 3.3. Bank. Bank’s agreement to the accession of Tempus as a party to the Treasury Agreement and supplementation thereof to include this Tempus Appendix shall be evidenced by collection of Tempus Fees and Other Amounts Due from Customer as more fully set forth herein.
4. **Tempus Services; Additional Tempus Products**
  - 4.1. Tempus Services. Tempus provides its Payment Gateway, Professional Services, Hardware and/or Software as defined and more fully described on its applicable Exhibit (each a “**Tempus Service**” and collectively, the “**Tempus Services**”).
  - 4.2. Additional Tempus Products. Additional related products, features, or services from Tempus may be available as set forth and described in a Tempus Schedule attached hereto or otherwise available on the Services Portal (each an “**Additional Tempus Product**”). Upon Customer’s selection, receipt or use of a Tempus Additional Product, (i) Customer represents and warrants to Tempus and Bank that Customer has access to and has read the Tempus Schedule applicable to such Additional Tempus Product, (ii) Customer agrees to comply with and be bound by then current terms and conditions for such Additional Tempus Product as set forth in its applicable Tempus Schedule and (iii) such Additional Tempus Product shall be considered included in the term Tempus Services as used throughout this Tempus Appendix.
5. **Updates**. From time-to-time updates to the Tempus Services may be released. These updates must be installed and integrated on and into Customer’s systems, as instructed. Customer acknowledges and agrees that failure to install updates in a timely fashion may impair the functionality of the Tempus Service(s), including Customer’s ability to submit payment transactions. Neither Tempus or Bank shall have any liability under the Tempus Appendix or the Treasury Agreement to Customer relating to or arising out of Customer’s failure to properly install the most current version of any Tempus Service and any updates thereto and will have no obligation to provide support or other services for Customers using outdated versions.
6. **Dependent Solutions**. As more fully set forth in an Exhibit, Tempus Schedule, Statement of Work, Equipment Document, or supporting documentation, certain products or services may be required for a Tempus Service or Additional Tempus Product to be successfully implemented and/or provided to Customer (“**Dependent Solution**”). Should a Dependent Solution not be obtained by Customer or if later terminated, expired, or otherwise be inactivated for any reason, Customer’s ability to receive certain Tempus Services and/or Additional

Tempus Products may be impacted without notice and Tempus shall no longer be obligated to provide such Tempus Services and/or Additional Tempus Product(s) to Customer. Further, should a Dependent Solution be unavailable for any reason, Customer's ability to use and/or access the Tempus Service(s) may be impacted until availability of the Dependent Solution is restored.

7. **Use of Providers.** Provider(s) engaged by Customer whose products or services are used in connection with Customer's payment transactions, any of the Tempus Services, and/or performance of Customer's obligations under this Tempus Appendix are considered agents of Customer and Customer is solely responsible for their actions, inactions, and compliance with the terms of this Tempus Appendix and/or the Treasury Agreement, as applicable, Payment Network Rules, and applicable laws. Customer's use of any Provider does not affect Customer's obligations under this Tempus Appendix or the Treasury Agreement; and Tempus shall have no liability or responsibility to Customer or others regarding these Provider(s) or their services provided to Customer, even if Tempus (or one of its affiliates) recommended such Provider to Customer.
8. **Fees; Statements; Collection of Amounts Due**
  - 8.1. Tempus Fees; Other Amounts Due; Hardware Fees. In consideration of the Tempus Service(s) provided to Customer, Customer agrees to pay the fees associated with such Tempus Service(s) ("**Tempus Fees**") as reflected in the most recent Pricing Proposal, Equipment Document, or Statement of Work, as applicable. In addition to Tempus Fees, Customer is also responsible to pay other fees, charges, or other assessments, including any amounts levied against, assessed, or otherwise charged to Tempus by a third-party in connection with or related to Tempus' provision of the Tempus Services to Customer ("**Other Amounts Due**"). Tempus Fees, other than Hardware Fees (defined below), and Other Amounts Due shall be calculated pursuant to the most recent Pricing Proposal or Statement of Work, as applicable; provided, should there be a direct conflict between a Pricing Proposal and a Statement of Work, the Statement of Work shall control. Hardware Estimate(s) shall become binding once included or incorporated into an Equipment Document.
  - 8.2. Tempus Statements. A statement or report reflecting Customer's Transaction activity and/or other details regarding the Tempus Services (other than Hardware) will be provided or otherwise made available to Customer (physically or electronically) on a periodic basis (each a "**Tempus Statement**"). The Tempus Statement will itemize the Tempus Fees (except Hardware Fees) and Other Amounts Due for such period. Customer shall promptly and carefully review each Tempus Statement. If Customer believes any adjustments should be made to a Tempus Statement, Customer must notify Tempus in writing within sixty (60) days the Tempus Statement date. Upon receipt of Customer's timely adjustment request, Tempus agrees to investigate in good faith and make any corrective adjustments. Tempus shall have no obligation to investigate or effect any such adjustments for untimely requests; and any voluntary efforts by Tempus to review shall not create any obligation to continue such investigation or any future investigation.
  - 8.3. Collection of Amounts Due. Tempus Fees (except Hardware Fees) and Other Amounts Due from Customer will be collected in the same manner as Fees are paid to Bank under the Treasury Agreement. For fees, charges, taxes, shipping, and other costs associated with Hardware ("**Hardware Fees**"), such amounts shall be due and payable by Customer to Tempus as set forth on an Equipment Document.
  - 8.4. Survival. Tempus Fees and any and all Other Amounts Due under this Tempus Appendix shall not be subject to any time limitations and shall survive termination until fully and completely paid.
9. **Confidential Information; Data Security.** Except as expressly provided in this Tempus Appendix or otherwise in a Tempus Schedule, Statement of Work, Equipment Document, or supporting documentation, the confidentiality obligations included in the Treasury Agreement will apply to Tempus and the Tempus Services. In addition, Tempus will maintain and enforce commercially reasonable information security and physical security procedures and will handle Consumer Information in accordance with and as defined in the Data Security Addendum attached as Attachment 2 to Tempus General Terms. For clarity, any Data Security Addendum included or incorporated by reference in the Treasury Agreement shall not be construed to apply to Tempus or the Tempus Services.
10. **Consent to Use and Exchange Information.** Customer acknowledges and agrees information, including Confidential Information, provided to or collected by Bank or Tempus may be used, disclosed, and/or exchanged by, to, or between them or their respective Representatives (i) to exercise rights or perform obligations under this Tempus Appendix or in connection with the Tempus Services, (ii) to mitigate and/or prevent fraud, (iii) for verification, validation, reference, or other risk-management considerations or (iv) to contact Customer

regarding or relating to this Tempus Appendix, the Tempus Services, and/or any Additional Tempus Product.

11. **Consents.** Customer is exclusively responsible for obtaining any consents necessary or required under any applicable laws or Network Rules from its customers with respect to any information which may be shared with Tempus, Bank and/or Group Participants (if applicable), including specifically the consent to share Consumer Information, personally identifying information, cardholder data, and depository account information. In addition, Customer is responsible for the accuracy, quality and legality of and the means by which Customer acquired such data and information.
12. **Group Participants; Shared Services; Shared Data.**
  - 12.1. Group Participants; Shared Services. Subject to Tempus approval, upon request from Customer and one or more Affiliates of Customer who are Participating Customer(s) or party(ies) to a separate agreement with Tempus for Tempus Services (each a “**Group Participant**” and collectively the “**Group Participants**”), Tempus will provide each Group Participant with its respective Tempus Services, but such Tempus Services will be centralized and/or amalgamated such that each Group Participant may share or otherwise utilize certain Tempus Services (in whole or in part) provided to another Group Participant (“**Shared Services**”) as well as have access to and use Shared Data.
  - 12.2. Shared Data. By receiving Shared Services and participation as a Group Participant, Customer is expressly authorizing and agreeing that Tempus may provide all Group Participants with information about the Tempus Services received or provided to Customer together with any data or other information provided to or otherwise obtained by Tempus in connection with the Tempus Services, including Customer’s Confidential Information, transaction data, cardholder data, depository account information, merchant account identification numbers, etc. (collectively, the “**Shared Data**”). Customer is exclusively responsible for any Shared Data it extracts, copies, uses, stores, accesses, modifies, or retains, whether whole or in part, directly or indirectly and compliance with all applicable laws and Network Rules associated therewith.
  - 12.3. Affiliate Representation. At all times during the term of this Tempus Appendix and Customer’s participation as a Group Participant, Customer represents and warrants to Tempus that it is an Affiliate of each and every other Group Participant receiving Group Services. In addition, Customer represents and warrants to Tempus that it has all rights and requisite corporate or other authorities and permissions necessary to participate as a Group Participant and receive the Shared Services and Shared Data. Customer agrees to notify Tempus should it no longer be an Affiliate of each and every other Group Participant or no longer has the requisite authorities or permissions to participate as a Group Participant.
  - 12.4. Termination of Shared Services. Should any Group Participant cease being an Affiliate of all other Group Participants, Tempus may stop providing the Shared Services and/or access to Share Data to any or all Group Participants at Tempus’ sole discretion.
  - 12.5. Customer Responsibilities. Customer expressly acknowledges and agrees that it is responsible for obtaining any necessary approvals from any of its Providers and/or completed any required registrations with applicable Payment Networks associated with Customer’s participation as a Group Participant, including receipt of the Shared Services and/or Shared Data.
  - 12.6. Limitation of Liability; Indemnity. Customer agrees it is not Tempus’ or Bank’s responsibility to determine whether Customer is an Affiliate of other Group Participants or whether Customer has the requisite authorities and permissions necessary to participate as a Group Participant. Customer agrees, on behalf of itself any of its successors or assigns, that neither Bank or Tempus shall have any liability to Customer for any loss or damage that Customer or any of its Affiliates may claim to have suffered or incurred, either directly or indirectly, by reason of the Shared Services and/or the Shared Data. Customer agrees to indemnify and hold Tempus and Bank harmless from and against any and all claims, and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorney’s fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, including but not limited to Customer, any other Group Participant, or any of their respective Affiliates, arising out of, or otherwise related to, the Shared Services and/or the Shared Data.
13. **Data Usage.** Tempus shall have the right to collect and analyze data and other information obtained in the course of its implementation, provision, or performance of the Tempus Services and related systems and technologies, including, without limitation, information concerning cardholder data, transaction data, and/or any information derived therefrom. Nothing in this Tempus Appendix or the Treasury Agreement shall be construed to limit Tempus from (i) using such information and data to improve and enhance Tempus’ products

and services or for other development, diagnostic and corrective purposes, and (ii) disclose such data or information in an aggregate or other de-identified form in connection with its business purposes or otherwise as permitted by applicable law.

14. **Tempus Property; Ownership; Restrictions.** Tempus (or its suppliers) retains the ownership of all right, title and interest in and to any of the following (collectively, “**Tempus Property**”): (i) the Tempus Services, Additional Tempus Products, Tempus’ trademarks, trade names, service marks, logos, or other similar indicia of origin, and all patents, copyrights and other proprietary rights therein and any and all configurations, enhancements, updates, developments, modifications, and derivative works thereof (ii) any materials with respect to the Tempus Services or Additional Tempus Products, including but not limited to any software (whether in object code or source code form), computer programs, related documentation, technology, firmware, web-pages, databases, proprietary data, or other proprietary information developed or provided by Tempus (or its suppliers), such as text, graphics (including the underlying web-presentation code of the Tempus Services or Additional Tempus Products), logos, button icons, images, designs, drawings, specifications, techniques, algorithms, diagrams, methods, any non-public know-how, methodologies, documentation, set-up forms, or processes, procedures, or techniques used by Tempus to provide the Tempus Service(s) or Additional Tempus Products including any tangible or intangible embodiments or derivatives thereof; and (iii) all patents, copyrights, moral rights, author’s rights, rights of attribution, mask works, trademarks, trade secrets and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing. Customer shall acquire no rights to Tempus Property except as expressly set forth in a Statement of Work and shall take no action to attempt to obtain any ownership or title to Tempus Property or otherwise which may adversely affect or impair Tempus’s ownership of Tempus Property. Customer shall not rent, sell, resell, lease, sublicense, loan or otherwise transfer the Tempus Property or any portion thereof. Should Customer use any Tempus Property (or a portion thereof) in the creation, enhancement or modification, revision, translation, abridgement, condensation, expansion, collection, compilation or any other form in which such works by Customer may recast, transform or adapt any Tempus Property, or a portion thereof, such derivatives shall be owned by Tempus and all right, title and interest in and to each such derivative work shall automatically vest in Tempus. Tempus shall have no obligation to grant Customer any right in any such derivative work(s). Customer’s obligations under this provision shall survive any termination or expiration of this Tempus Appendix and/or the Treasury Agreement.
15. **Access Credentials.** In conjunction with certain Tempus Service(s), Tempus may issue Customer and/or Customer may otherwise create its own combination of unique identifiers inherent to Customer, including usernames, passwords, encryption keys, authentication or verification codes, or other items used to access Tempus Service(s), or the systems, technology, intellectual property, or Confidential Information of Tempus, or any data or content contained therein (“**Access Credentials**”). Customer must maintain adequate security controls for any and all Access Credentials in its possession or under its control. Customer is exclusively responsible for any and all activity performed using Customer’s Access Credentials. Customer will immediately notify Tempus if Customer becomes aware of any actual or suspected loss, theft, or unauthorized use of an Access Credential. Tempus may take all action it deems reasonable in its sole discretion, including suspending any of the Tempus Services or portions thereof, to prevent or mitigate against any actual or suspected compromise to Access Credentials, regardless whether Tempus was notified by Customer or Tempus has a good faith reason to believe such actual or suspected compromise to Access Credentials has occurred.
16. **Effective Date; Term.**
  - 16.1. Effective Date. Subject to its acceptance by Tempus as set forth herein, the Tempus Appendix shall be effective as of the Appendix Effective Date and continue thereafter until terminated by any party as provided herein or under the Treasury Agreement.
  - 16.2. Term. The term of the Tempus Appendix shall be coterminous with the Treasury Agreement.
17. **Termination.** This Tempus Appendix will terminate automatically upon termination or expiration of the Treasury Agreement. Provided, however, should Customer continue to use the Tempus Service(s) after expiration or termination of the Tempus Appendix, then the terms of this Tempus Appendix shall continue to govern as if in full force and effect until Customer ceases use of all Tempus Service(s).

18. **Effect of Termination.** Upon termination of the Tempus Appendix, Customer shall (a) immediately cease use of any Access Credentials and stop all access and use of all Tempus Property; (b) shall return all copies of Tempus Property to Tempus; (c) delete all Tempus Property off of any and all storage media possessed or controlled by Customer; and (d) promptly certify to Tempus that it has complied with the requirements herein.
19. **Limitation of Liability.** The limitation of liability set forth in the Treasury Agreement, shall apply to Tempus Services and/or Tempus Additional Products. For clarity, the maximum damages set forth in the Treasury Agreement shall apply to the Tempus Service(s) but calculated based on the fees collected by Tempus or Bank from Customer, as applicable.
20. **U.S. Domicile.** To receive any Tempus Service(s), Customer must be domiciled in the United States (excluding U.S. Territories) and each of Customer's locations, including physical location(s) and/ or internet address(es), receiving Tempus Service(s) and/or remitting any payment transactions in connection with any Tempus Service(s) must also be located in the United States (excluding U.S. Territories).
21. **Notices.** All notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Tempus Services and/or ) shall be in writing, if to Customer at the address provided under the Treasury Agreement or by any electronic means, including but not limited to the e-mail address you have provided to Bank or Tempus, and if to Tempus at 635 W. 11<sup>th</sup> St., Auburn, IN 46706, Attn: Chief Sales Officer with a copy to 1600 Market Street, 8<sup>th</sup> Floor, Philadelphia, PA 19103 ATTN: Treasury Management Counsel, and if to Bank, to the address provided in the Treasury Agreement. Notice under this Tempus Appendix shall be deemed to be effective in the same manner as set forth in the Treasury Agreement.
22. **Entire Agreement; Waiver.** This Tempus Appendix constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes any previous agreements and understandings. A party's waiver of a breach of any term or condition of this Tempus Appendix shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

**IN WITNESS WHEREOF**, intending to be legally bound, Customer has caused its duly authorized representative to execute this Tempus Appendix on its behalf, as of the Appendix Effective Date.

\_\_\_\_\_ **[CUSTOMER FULL LEGAL NAME]**

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

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

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

Date: \_\_\_\_\_ (**"Appendix Effective Date"**)

## Attachment 1 to Tempus General Terms and Conditions

### Glossary

**“Affiliate”** means an entity that, directly or indirectly, (i) owns or controls a party to the Tempus Appendix or (ii) is under common ownership or control with a party to the Tempus Appendix.

**“Card”** means a credit, debit, charge, purchase, or virtual card or any other card-based or Payment Network-based payment instrument.

**“Cardholder”** means an individual person or entity whose name is embossed on a Card and any authorized user of such Card, including the individual person or entity that entered into an agreement to establish an account associated with such Card with an Issuer.

**“Check”** means a paper or electronic draft instrument that directs a financial institution to pay or otherwise transfer funds from the drawer’s account to the bearer identified on such instrument.

**“Consumer Information”** means all non-public personal information of consumers, including, without limitation, information defined as such by the Gramm-Leach-Bliley Act (Pub. L. 106-102), which is provided by or on behalf of Customer to Tempus or otherwise as may be accessed by Tempus in connection with its provision of Tempus Services to Customer.

**“Hardware Estimate”** means an estimate, invoice, or other similar document presented to Customer by or on behalf of Tempus which is an estimate or projection of anticipated Hardware Fees. If Hardware Fees are included in a Pricing Proposal, such amounts shall be considered a Hardware Estimate.

**“Issuer”** means a financial institution or Network (or other entity authorized by a Network) which has issued a Card to an individual person or entity.

**“Marks”** means any names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations.

**“Network Rules”** means the applicable rules, regulations, policies, releases, procedures, interpretations and other requirements (whether contractual or otherwise) imposed, promulgated, or adopted by any Payment Network, the PCI Security Standards Council, LLC, the National Automated Clearing House Association, the Special Interest Group for IAS Standards, Inc., and/or related authorities.

**“Payment Network”** means any entity formed to administer and promote Cards, including without limitation Visa U.S.A., Inc. (“**Visa**”), Mastercard Worldwide (“**Mastercard**”), DFS Services LLC (“**Discover**”), PayPal, Inc. (“**PayPal**”), American Express Company, Inc. (“**American Express**”), and any applicable debit networks.

**“Pricing Proposal”** means the most recent document provided to Customer by or on behalf of Tempus prior to the Appendix Effective Date, which includes Tempus Fees, Other Amounts Due, and/or other fees and charges associated with Tempus Services and/or Additional Tempus Products, and any and all additions or changes Tempus may make thereafter, whether contained in updated versions or in separate communications.

**“Provider”** means a vendor, agent, a Designated Third-Party Provider, individual or entity, other than Tempus (and its employees), engaged by Customer to provide solutions, including Dependent Solutions, to Customer. Provider(s) may include Bank and/or other affiliates of Tempus.

## Attachment 2 to Tempus General Terms and Conditions

### TEMPUS DATA SECURITY ADDENDUM TO TEMPUS APPENDIX

Tempus maintains comprehensive cybersecurity processes and procedures aligned to industry best practices. Tempus shall undertake commercially reasonable efforts to provide the Tempus Services in accordance with the principles described in this Data Security Addendum. This supplements the Tempus Appendix. In the event of a direct conflict between the terms of this Data Security Addendum and the Tempus Appendix, the terms of the Tempus Appendix shall control. Capitalized terms used in this Data Security Addendum and not otherwise defined shall have the meanings given them in the Tempus Appendix.

#### 1. General Obligations

- 1.1 Use limitation. Except as may otherwise be set forth in the Tempus Appendix, Tempus shall access, process, transfer, and use Consumer Information exclusively for the purposes of: (a) providing the Tempus Services; (b) complying with reasonable written instructions provided by Customer where such instructions are consistent with the terms of the Tempus Appendix; and (c) for meeting any of Tempus's reasonable or required compliance, legal, archival, backup, and audit obligations. Where Tempus is compelled to process Consumer Information under applicable law, it will notify Customer prior to performing the processing unless legally prohibited from doing so.
- 1.2 Confidentiality. Tempus and Customer are bound by the confidentiality provisions of the Tempus Appendix with respect to provision, processing, use, storage, and deletion of Consumer Information.
- 1.3 Compliance with Law. Tempus will comply with all laws relating to the protection of Consumer Information applicable to Tempus and the Tempus Service(s) being performed. Customer's instructions related to the processing of Consumer Information shall comply with applicable law. Tempus shall notify Customer if any instructions from Customer, in Tempus's opinion, violate applicable law.
- 1.4 Subcontracting. Tempus may delegate or subcontract performance of the Services to third parties, including Tempus's affiliates, without Customer's prior consent ("Tempus Delegates"). Tempus shall ensure that Tempus Delegates who have access to your Consumer Information adhere to information security standards that are substantially equivalent, but in no event more permissive, than those provided in this Data Security Addendum and the Tempus Appendix. Tempus Delegates will only access, use, transfer, or process your Consumer Information in accordance with Tempus's written instructions. Notwithstanding any delegation or subcontracting, Tempus shall remain liable to Customer for the performance of the Services, regardless of the involvement of a Tempus Delegate.
- 1.5 Data Integrity. Tempus will provide reasonable assistance to Customer in ensuring that Consumer Information held by Tempus is reasonably accurate, complete, and, where appropriate information is made available to Tempus, kept up to date. Tempus recognizes that Customer may have obligations to its data subjects to delete, update, modify, or produce Consumer Information. Accordingly, Tempus agrees to provide reasonable assistance to Customer in responding to a verifiable data subject's exercise of their rights under applicable law with respect to Consumer Information held by Tempus.
- 1.6 Data Minimization. In performing the Services, Tempus will prevent the collection of information from Customer and Customer's data subjects that is not reasonably relevant or necessary to the performance of the Services.
- 1.7 Return or Destruction. Following the cessation of the Services, including termination or expiration of the Tempus Appendix, Tempus will cooperate with Customer's request for return or destruction of any Consumer Information as required by the Tempus Appendix or applicable law.
- 1.8 Recordkeeping. Tempus will keep records to demonstrate compliance with the obligations described in this Data Security Addendum and will make such records available to Customer in a reasonable manner and with reasonable frequency.

#### 2. Security Obligations

- 2.1 Technical and Organizational Measures. Tempus will maintain and enforce commercially reasonable information security and physical security policies, procedures, and standards. At a minimum, Tempus will:
  - 2.1.1 Comply with the applicable regulatory and industry standards and requirements, including the standards set forth in ISO 27002 published by the International Organization for Standardization and with the current and future iterations of the Payment Card Industry Data Security Standard ("PCI DSS"), the Payment Card Industry Point-to-Point Encryption ("PCI P2PE") standard, and the



Payment Card Industry Secure Software Standard Data Security Standard ("PCI SSS") as administrated by the Payment Card Industry Security Standards Council ("PCI SSC").

- 2.1.2 Maintain an industry-standard level of data security controls, including, but not limited to, logical access controls, data access controls (e.g., role-based access control, rule of least access), accountability tracking, logging, and tracking of access to Consumer Information, anti-virus software, and provision for system backup.
- 2.1.3 At least annually, an assessment of the information technology and information security controls for the applicable systems used in Tempus' provision of the Tempus Services will be conducted by an independent auditor in accordance with the current Statement on Standards for Attestation Engagements No. 18, or its successor standard, issued by the American Institute of Certified Public Accountants and a service organization control report issued as a result thereof ("SOC 2 Report") that includes the results of such assessment. Upon Customer's request but no more frequently than once per calendar year, we will provide a copy of the SOC 2 Report to Customer subject to the confidentiality obligations contained in the Tempus Appendix.
- 2.1.4 Maintain an incident response program that includes an inter-disciplinary team to respond to, conduct root-cause analysis, and remediate any: (a) unauthorized or unlawful access to, or use, loss, destruction, alteration, or disclosure of any Consumer Information held by Tempus or any rendering of such Consumer Information inaccessible or unusable; or (b) unauthorized access to any Tempus controlled facility, computer network, system, or device containing Consumer Information associated with transactions submitted to Tempus using the Payment Gateway or otherwise in connection with Customer's use of other Tempus Services ("Security Incidents").
- 2.2 Documented Information Security Program. Tempus will design, maintain, and document a process for designing, establishing, reviewing, updating, and validating its information security policies.
- 2.3 Risk Assessment. Tempus will design, maintain, and document a process for vetting the risk posed by Tempus third parties, including Tempus Delegates. Such process may include, without limitation, requiring such third parties to provide information necessary for Tempus to complete periodic risk assessments related to the products or services offered by such third-party.
- 2.4 Business Resiliency. Tempus will develop plans relating to data backup, operational business continuity and recovery, pandemic preparedness, and technical disaster recovery, (collectively "Continuity Plans"), and test Tempus's compliance with such Continuity Plans no less than annually.
- 2.5 Training. Tempus will provide periodic, but no less than annual, security and privacy training to Tempus personnel involved in processing Consumer Information.

### **3. Data Breach Obligations**

- 3.1 Tempus to Notify Customer. Tempus will notify Customer of any Security Incident within a reasonable time following discovery of such Security Incident, without undue delay, and in any event within the period mandated by applicable law. Such notifications will include such information as is available to Tempus sufficient to meet Customer's obligations to notify data subjects, regulators, or other third parties as required by applicable law. Tempus will provide Customer with updated notice if its investigation of a Security Incident uncovers information that would have been disclosed during the initial notification had such information been known. Unless required by applicable law or regulation, Tempus will not notify data subjects of any Security Incident directly.
- 3.2 Cooperation. Tempus will provide Customer with reasonable assistance and cooperation in Customer's investigation, mitigation, and remediation of any Security Incidents as required by applicable law.
- 3.3 Remediation. Tempus will remediate the identified causes of a Security Incident on a commercially reasonable timeline, but in no event longer than required by applicable law or regulation.
- 3.4 Reimbursement of Costs. Subject to the Limitation of Tempus Liability to Customer provision in the Tempus Appendix, Tempus will reimburse Customer for the reasonable costs of breach investigation, notification assessment, notification correspondence, and, where required by applicable law, credit monitoring services that are directly related to a Security Incident caused solely by Tempus's breach of its obligations under this Data Security Addendum to Customer.

## Payment Gateway Exhibit to Tempus Appendix

This Payment Gateway Exhibit to Tempus Appendix ("**Payment Gateway Exhibit**") is an Exhibit to the Tempus Appendix and sets forth the terms and conditions applicable to the Payment Gateway.

**I. Definitions.** Capitalized terms used but not otherwise defined in this Payment Gateway Exhibit shall have the meanings prescribed in Tempus Appendix or the Treasury Agreement.

**II. Payment Gateway; Gateway License.**

- A. Pursuant to the terms of the Tempus Appendix and this Payment Gateway Exhibit:
  - i. Tempus will make its proprietary payment gateway involving the transmission of payment transactions and associated transaction data between Customer and Customer's Provider(s) together with related features ("**Payment Gateway**") available to Customer; and
  - ii. Tempus grants to Customer a non-exclusive, non-assignable, and non-transferrable limited, royalty-free, revocable license to access and use the Payment Gateway including updates thereto, for the sole purpose of Customer presenting payment transactions for processing to Customer's payment processing Provider(s) ("**Gateway License**").
- B. Upon Customer's use or receipt of the Payment Gateway, Customer agrees to be bound by the terms and conditions of this Payment Gateway Exhibit; and the Payment Gateway shall be considered included in the term "Tempus Services" as used throughout the Tempus Appendix.
- C. Nothing in this Payment Gateway Exhibit or the Tempus Appendix assigns, transfers or creates any rights, title or interest for Customer (whether express or implied, by estoppel or otherwise). Any and all right, title, or interests associated with the Payment Gateway that is not expressly granted by Tempus is expressly withheld.

**III. Implementation; Trial Authorizations; Discrepancies/Adjustments.**

- A. Tempus will make the Payment Gateway available to Customer through Tempus' standard implementation plan. Custom or non-standard implementation of the Payment Gateway is available through Tempus' Professional Services as reflected in a Statement of Work.
- B. As part of its implementation of the Payment Gateway, Customer expressly authorizes Tempus to conduct live, non-test authorization(s) in a de minimis amount to verify connectivity of the Payment Gateway to Customer's Provider of payment processing services ("**Trial Authorizations**"). Tempus will initiate a void or reversal of the Trial Authorizations; however, Customer acknowledges and agrees that each of the Trial Authorizations may result Customer incurring fees or other charges from one or more of its Providers.
- C. If Customer believes any discrepancies exist or adjustments are needed with respect to implementation or set-up of the Payment Gateway, the Trial Authorizations, or if Customer has any other questions or concerns regarding how payment transactions are transmitted to Customer's payment processing Provider(s), Customer agrees to notify Tempus within ninety (90) days after (i) the Trial Authorizations are complete or (ii) Customer's first live, non-test payment transaction using the Payment Gateway or Gateway License, whichever is later. If Customer fails to notify Tempus within such time frame, Tempus will not be required to investigate any discrepancies or effect any related adjustments, absent any willful misconduct by Tempus. Provided, Tempus may, in its discretion, investigate untimely matters identified by Customer; however, any voluntary efforts by Tempus to do so will not create any obligation to continue such investigation or conduct any future investigation. Customer acknowledges that a Statement of Work and/or additional costs may be associated with Tempus' effectuating Customer's discrepancy and/or adjustment requests.

**IV. Dependent Solutions.** Dependent Solutions for the Payment Gateway include:

- A. Compatible payment processing platforms and systems for each type of payment transaction Customer wishes to submit using the Payment Gateway, including Card transactions and/or Check transactions;
- B. An internet network or other telecommunication carrier connection and access with adequate bandwidth capacity;
- C. A website, including establishing, hosting and maintenance;
- D. An electric or other power connection; and
- E. Networking equipment, computer hardware, and/or computer software compatible with the Payment Gateway.

- V. Customer's Responsibilities.** Customer is solely and exclusively responsible for the following:
- A. Prior to implementation of the Payment Gateway, Customer must notify and/or obtain any necessary or required consents from any Card issuer, Payment Network, or Provider related to the Trial Authorizations.
  - B. Compliance with all applicable laws and Network Rules including conducting ongoing reviews thereof and staying apprised of all applicable changes.
  - C. Obtaining any Dependent Solutions identified in this Payment Gateway Exhibit or any other Tempus Schedule which incorporates its terms or otherwise is identified by Tempus as necessary for Customer's receipt or use of the Payment Gateway.
  - D. Any products or services obtained by or provided to Customer from any Provider, including any Dependent Solution for the Payment Gateway, including ensuring that such product or service can meet Customer's needs and standards.
  - E. At all times while using the Payment Gateway or the Gateway License, Customer must promptly and carefully review any statements or reports provided or made available to Customer (physically, electronically or otherwise) reflecting or associated with the Trial Authorizations and/or Customer's payment transaction activity, whether provided by Tempus or any Provider.
  - F. Maintaining complete back-up records of all information relating to its payment transactions, including those related to orders, invoices, inquiries, and purchases, and any other information submitted by Customer to Tempus.
  - G. Sending and retrieving data timings from the payment processing Provider(s), any Card issuer, or a Payment Network's systems.
  - H. Completely and accurately implementing the Payment Gateway according to Tempus' operating instructions along with any Updates thereto.
  - I. Changes requested by Customer which require down-time of the Payment Gateway during business service hours regardless if such changes are implemented by Customer or by Tempus on Customer's behalf.
  - J. Delays caused by or arising out of any products or services used by Customer in connection with the Payment Gateway or the Gateway License, including any Dependent Solutions, unless such products or services are Tempus Services.

**VI. DISCLAIMERS; LIMITATION OF LIABILITY.**

- A. THE PAYMENT GATEWAY IS PROVIDED "AS IS" AND TEMPUS MAKES NO REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) WITH REGARD TO THE PAYMENT GATEWAY SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, NON-INFRINGEMENT OR THAT THEY WILL FUNCTION UNINTERRUPTED OR ERROR-FREE; AND ANY AND ALL SUCH REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED) ARE DISCLAIMED.
- B. NEITHER THE PAYMENT GATEWAY OR THE GATEWAY LICENSE INCLUDE ENCRYPTION OR TOKENIZATION OF TRANSACTION DATA, CARDHOLDER DATA, DEPOSITORY ACCOUNT INFORMATION, OR ANY OTHER DATA SUBMITTED BY CUSTOMER TO TEMPUS.

- VII. Modifications.** In addition to Updates, this Payment Gateway Exhibit may be changed or modified by Tempus at any time and for any reason, including to add, remove, or update the provisions applicable to the Payment Gateway. Customer's continued use of the Payment Gateway after this Payment Gateway Exhibit is updated shall constitute Customer's affirmative acceptance and agreement thereof. Should Customer not agree with the updated Payment Gateway Exhibit (or any portion thereof), Customer may exercise its right to discontinue receipt of the Payment Gateway or otherwise terminate the Tempus Appendix as permitted thereunder.

- VIII. Suspension; Termination.** Tempus reserves the right to alter, immediately suspend or, upon notice, terminate the Gateway License and Customer's use of and access to the Payment Gateway in the event (i) Customer fails to meet any of its responsibilities identified in this Payment Gateway Exhibit or otherwise is in breach of its terms or any of the terms of the Tempus Appendix, or the Treasury Agreement, (ii) Customer no longer any agreement Tempus has with third parties that are involved in providing the Payment Gateway is terminated, or (iii) Tempus is otherwise unable to continue to provide the Payment Gateway.

## Professional Services Exhibit to Tempus Appendix

This Professional Services Exhibit to Tempus Appendix ("**Professional Services Exhibit**") is an Exhibit to the Tempus Appendix and sets forth the terms and conditions applicable to the Professional Services.

- I. **Definitions.** Capitalized terms used but not otherwise defined in this Professional Services Exhibit shall have the meanings prescribed in Tempus Appendix or the Treasury Agreement.
- II. **Professional Services; Statements of Work.**
  - A. "**Professional Services**" are the custom development, project management, programming modifications, builds, deployment, design, fulfillment, and other deliverables as may be described in a Statement of Work, including but not limited to, technical integrations, certifications, non-standard implementation, application branding and configuration services, reporting and other technical development, terminology and user interface customization, and analytics services.
  - B. Tempus will provide Professional Services to Customer as set forth in a mutually agreed document which describes and outlines the details of a project, including any deliverables or other requirements (each a "**Statement of Work**"). Each Statement of Work is subject to the terms of the Tempus Appendix and this Professional Services Exhibit. Unless specified in writing to the contrary, each Statement of Work is independent from and has no impact on other Statements of Work. To the extent a Statement of Work includes any other Tempus Service(s) beyond Professional Services, such Tempus Service(s) shall be governed by its applicable Exhibit(s) upon Customer's use or receipt thereof.
  - C. Each Statement of Work will set forth the scope of the Professional Services and the associated fees. Either Party may propose changes in the scope of the Professional Services by submitting a service change request to the other party a reasonable time prior to the date upon which the requesting party desires the change to be implemented. If, after reviewing the potential impact to the Services, the other Party agrees to implement such change, the Parties will negotiate and enter into a written change request reflecting the mutually agreed terms and conditions, including any price adjustments, for the change. Neither party will be bound by any proposed change until both parties have accepted that change in a written change request.
- III. **Admin Portal.** Tempus may include the development of Tempus' web-based reporting tool which permits Customer to access information related to its payment transactions associated with the Payment Gateway and other data and information associated with other Tempus Services provided to Customer ("**Admin Portal**"). Creation and delivery of Admin Portal is available as part of Tempus' Professional Services as set forth in a Statement of Work. However, Customer's use of Admin Portal is considered Software and subject to the Software Exhibit.
- IV. **Limited Warranty.** Tempus represents and warrants that it will perform the Professional Services described in a Statement of Work in a workmanlike and professional manner and consistent with generally recognized industry standards. If Tempus breaches this warranty and Customer makes a reasonably detailed warranty claim within 30 days of discovering the issue, Tempus will, at its own expense, promptly reperform any non-conforming Professional Services. These procedures are Customer's exclusive remedy and Tempus's entire liability for breach of the representations and warranties in this Section.
- V. **Location of Services.** The Professional Services may be performed at any facility owned or operated by Tempus and/or its subcontractors and as otherwise set forth in an applicable Statement of Work. If Customer requests Tempus to perform the Professional Services at any Customer sites, such sites must be located in the United States and Tempus agrees to comply with any of Customer's policies and procedures related to the use of, or access to, such sites (including work health and safety and security policies) specified in the Agreement. Tempus may suspend or refuse to deliver Services if conditions at the site are, in its reasonable opinion, unsafe or hazardous to Tempus employees required to work on that site. Customer will reimburse Tempus for reasonable travel and travel-related expenses provided that such expenses are approved in advance by Customer in writing.

## Hardware Exhibit to Tempus Appendix

This Hardware Exhibit to Tempus Appendix ("**Hardware Exhibit**") is an Exhibit to the Tempus Appendix and sets forth the terms and conditions applicable to Hardware.

I. **Definitions.** Capitalized terms used but not otherwise defined in this Hardware Exhibit shall have the meanings prescribed in Tempus Appendix or the Treasury Agreement.

II. **Hardware; Equipment Documents.**

- A. Hardware. Any equipment, terminals, hardware, payment devices, supplies and/or other hardware related items ("**Hardware**") purchased by Customer from Tempus pursuant to an Equipment Document. Hardware is sold to Customer from Tempus in connection with one or more other Tempus Service(s) and is not being sold for home or personal use.
- B. Equipment Documents. Hardware may only be sold to Customer from Tempus as reflected in a purchase agreement, purchase order, order form, or other documentation incorporating or including a Hardware Estimate, that is provided in connection with Customer's purchase of Hardware (each an "**Equipment Document**") which Tempus relies upon in fulfilling Customer's Hardware purchase. Each Equipment Document is subject to the terms of the Tempus Appendix and this Hardware Exhibit. Unless specified in writing to the contrary, each Equipment Document is independent from and has no impact on other Equipment Documents. Each Statement of Work will set forth the scope of the Professional Services and the associated fees.
- C. Software; Other Tempus Services. Any Software or other Tempus Service(s) which may be included or referenced on an Equipment Document will not be considered sold to Customer outright but instead will be provided to Customer pursuant to, and subject to the conditions any other applicable Exhibit(s) and the Tempus Appendix.
- D. Payment Terms. Customer shall pay the purchase price for each piece of Hardware as specified in the Equipment Document(s). In addition to the purchase price, Customer is responsible for and agrees to pay any taxes, levies, shipping fees, duties or assessments, however designated, levied or based on such charges associated with Hardware and any services, use or activities hereunder, including, without limitation, state and local sales, use, property, privilege and excise taxes, exclusive, however, of taxes based on our Tempus' income. Except as expressly set forth on an Equipment Document, Hardware must be paid in full prior to being shipped or otherwise provided to Customer.

III. **Terms of Delivery.** Except as expressly set forth otherwise in an Equipment Document:

- A. All Hardware shall be delivered FCA Delivery Destination Incoterms 2020, using Tempus' standard methods for packaging and shipping the Hardware. The "**Delivery Destination**" means the location identified by the Customer and agreed to by Tempus on the applicable Equipment Document where the Hardware will be delivered to. Unless expressly agreed to by the parties in writing, Tempus shall select the method of shipment of and the carrier for the Hardware. Tempus may, in its sole discretion, without liability or penalty, make partial shipments of Hardware to Customer. Each shipment constitutes a separate sale, and Customer shall pay for the units shipped, whether the shipment is in whole or partial fulfillment of an Equipment Document.
- B. Customer shall have thirty (30) days following delivery of the Hardware to examine and inspect the Hardware after receipt of the Hardware at the Delivery Destination and notify Tempus that Customer rejects the Hardware solely if they appear to be damaged, defective, or not conforming based on such initial visual inspection. Customer shall give Tempus the opportunity to examine any notice of complaint. Any Hardware not rejected within thirty (30) days following tender by Tempus shall be deemed accepted by Customer in satisfactory condition and meeting the specifications in effect for such Hardware. If Tempus confirms that the Hardware is defective, Tempus will attempt to replace the defective Hardware or refund the amount paid for such Hardware, at the discretion of Tempus.
- C. Any time quoted for delivery is an estimate only; provided, however, that Tempus shall use commercially reasonable efforts to deliver all Hardware on or before the requested delivery date. Tempus is not liable for or in respect of any loss or damage arising from any delay in filling any Equipment Document, failure to deliver, or delay in delivery. No delay in the shipment or delivery of any Hardware relieves Customer of its obligations under this Agreement, including accepting delivery of any remaining installment or other Equipment Document.

**IV. Transfer of Title and Risk of Loss.** Except as expressly set forth otherwise in an Equipment Document:

- A. Title to the Hardware shall transfer to Customer upon payment in full for such Hardware.
- B. Risk of loss to the Hardware shall pass to Customer upon delivery of the Hardware to the Delivery Destination. If Hardware is delivered in multiple pieces, parts or components, risk of loss with respect to each piece, part or component shall transfer as described in this paragraph. Title and risk of loss with respect to Hardware or components thereof that are rejected by Customer at the Delivery Destination shall transfer back to Tempus at the time that Tempus picks up the rejected Hardware or components, which shall take place within ten (10) business days following such rejection.

**V. Customer's Obligations**

- A. Customer is responsible to maintain proof of delivery documents and the serial number from the bottom of the Hardware.
- B. Customer shall not be entitled to (i) equip the Hardware with software that does not correspond to Tempus's factory default specifications or (ii) perform any value-added resale services nor install interfaces in the Hardware that are not provided by Tempus, unless expressly approved by Tempus in writing.
- C. Customer shall only access and use the Hardware, and ensure that any third parties using the Hardware, in accordance with the instructions and specifications provided by Tempus, including their Updates, provisions and specifications and any other documentation provided by Tempus with the Hardware, including any original equipment manufacturer's documentation and/or specifications.
- D. To the extent necessary, Customer is responsible to prepare the installation site(s) for the Hardware, but not limited to, the power supply circuits and phone lines, in conformance with the manufacturer's and/or Tempus' specification, each considered a Dependent Solution for such Hardware.
- E. Except as agreed by Tempus in writing, Customer may not relocate, remove, disconnect, modify or in any way alter any Hardware used in connection with other Tempus Services being provided to Customer.
- F. Customer must provide Tempus with at least thirty (30) days prior written notice to request the relocation of any Hardware installed at a specific location/address. Upon request, Customer must allow Tempus (or its agents or representatives) reasonable access to the premises where installed Equipment is or will be located purposes of inspecting, examining or repairing the Equipment.
- G. If Tempus notifies Customer that any Hardware needs to be recalled or otherwise withdrawn from the market, and Customer refuses or otherwise fails to do so in a timely fashion, Customer agrees to indemnify Tempus, its affiliates, and their respective officers, directors, employees, agents and shareholders, from and against any and all liability, losses, damages, costs, expenses, penalties, and fines, including reasonable attorneys' fees, incurred or suffered by Tempus as a result of any such failure or refusal.

**VI. Manufacturer Warranty.** Except as expressly set forth on an Equipment Document, warranties, if any, for the Hardware originate from the applicable third-party provider or manufacturer ("**Manufacturer Warranty**"). Materials or documents, if any, setting forth warranty terms, conditions, exceptions, exclusions and disclaimers will be contained within the shipping packaging or otherwise provided to you. Help desk support is only available for Equipment purchased from us under the Equipment Documents. Support or related services will not be provided for any other products or equipment. Tempus will use commercially reasonable efforts to pass through any Manufacturer Warranty, as permitted by the manufacturer.

**VII. Disclaimers.**

- A. CUSTOMER ACKNOWLEDGES THAT NEITHER TEMPUS OR ITS THIRD-PARTY PROVIDERS CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE HARDWARE AND OTHER TEMPUS SERVICES ASSOCIATED WITH USING HARDWARE MAY BE SUBJECT TO LIMITATIONS, INTERRUPTIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF COMMUNICATIONS FACILITIES. TEMPUS AND ITS THIRD-PARTY PROVIDERS ARE NOT RESPONSIBLE FOR ANY INTERRUPTIONS, DELAYS, DELIVERY FAILURES, DATA LOSS, LOSS OF PROFITS, LOSS OF USE OR OTHER DAMAGE RESULTING FROM ANY OF THE FOREGOING INCLUDING ACTS OF GOD. IN ADDITION, TEMPUS DOES NOT WARRANT THAT THE OPERATION OF THE HARDWARE WILL BE ERROR-FREE OR THAT OPERATION WILL BE UNINTERRUPTED.

B. EXCEPT AS SPECIFIED HEREIN, CUSTOMER ACKNOWLEDGES THAT THE HARDWARE AND ANY AND ALL PARTS THEREOF ARE PROVIDED "AS IS", "AS AVAILABLE", AND "WITH FAULTS" BASIS. THE MANUFACTURER WARRANTY (IF ANY) SET FORTH HEREIN ARE TEMPUS'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO THE HARDWARE AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. EXCEPT AS SPECIFIED IN HEREIN, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS OR WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF CUSTOMERABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF KNOWN TO TEMPUS), NON-INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE ARE HEREBY EXCLUDED AND DISCLAIMED BY CUSTOMER, AND HEREBY WAIVED BY TEMPUS. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE MANUFACTURER WARRANTY FAILS OF ITS ESSENTIAL PURPOSE.

**VIII. Embedded Software License.** As of the delivery of the Hardware to Customer, Tempus grants Customer a fully paid-up, royalty-free, non-exclusive, non-sublicensable, worldwide license to execute, run, and use any firmware, operating and other systems, and software that is a part of or embedded in such Hardware ("**Embedded Software**"). Any Embedded Software shall be considered Software and subject to the Software Exhibit.

## Software Exhibit to Tempus Appendix

This Software Exhibit to Tempus Appendix ("**Software Exhibit**") is an Exhibit to the Tempus Appendix and sets forth the terms and conditions applicable to Software.

**I. Definitions.** Capitalized terms used but not otherwise defined in this Software Exhibit shall have the meanings prescribed in Tempus Appendix or the Treasury Agreement.

**II. Software; License.**

- A. Software. The software, software components (including application programming interfaces and software development kits), computer programs, applications, technology, knowhow and processes, and related documentation ("**Software**"). Software may be embedded in other Tempus Services or Additional Tempus Products or may be offered by Tempus, in its sole discretion on a stand-alone basis or in connection with the Payment Gateway, Professional Services, Hardware, or other Additional Tempus Product(s).
- B. License. Pursuant to the terms, including any restrictions, of the Tempus Appendix and this Software Exhibit, Tempus hereby grants Customer a non-exclusive, non-assignable, non-sublicensable, and non-transferable license to (i) access and use the Software for Customer's internal business purposes, and/or (ii) download, distribute internally, install, execute, run, and use the Software in connection with other Tempus Services as instructed or otherwise permitted by Tempus ("**Software License**"). Customer shall not remove, obscure, or deface any copyright or proprietary notices appearing in the Software and will retain all such notices in any permitted reproductions of the Software. All title, interest, and ownership in and to the Software belongs to Tempus or its licensors.

**III. Restrictions.** Except as expressly authorized in the Tempus Appendix or this Software Exhibit, Customer may not do any of the following, the occurrence of which shall be considered a material breach of Customer's obligations under the Tempus Appendix:

- A. Assign, sublicense, transfer, lease, rent or distribute any of its rights in the Software;
- B. Modify, alter, port, reverse engineer, translate, localize, or create derivative works based upon the Software in any manner;
- C. Reverse assemble, decompile, reverse engineer, translate or otherwise attempt to derive or obtain the source code, the underlying ideas, algorithms, structure or organization of the Software (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, or as permitted by an applicable Open-Source Software license);
- D. Copy, duplicate, frame or mirror the Software or any part thereof, other than framing on Customer's own intranets or otherwise for Customer's own internal business as previously disclosed to and approved by Tempus;
- E. Utilize any equipment, device, software, or other means designed to circumvent or remove any form of copy protection or product key used by Tempus in connection with the Software;
- F. Use the Software to develop a product which is competitive with any Tempus Services or Additional Tempus Products or to benchmark with any third party product or service;
- G. Enable access to the Software for a greater number of users than the total number of users purchased or otherwise permitted by Tempus (each a "**Registered User**");
- H. Use the Software or the Software License to store or transmit any disabling code, date bomb, time bomb, Trojan horse, bug, virus, worms, or any other code, key or other device that may damage, destroy, alter, reveal, disrupt, deny access to, disable, or otherwise harm any software, hardware, data, or systems;
- I. Attempt to gain unauthorized access to Tempus or its related systems or networks;
- J. Use the Software in violation of any law or regulation, including by allowing the transfer, transmission, export or re-export of the Software or any portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, the Office of Foreign Assets Control, or any other government agency;
- K. Remove, alter or obscure any proprietary notices in or on the Software including copyright notices,
- L. Disclose or make available any Access Credential(s) associated with the Software or Software License to any unauthorized individual or third party; or
- M. Cause or permit any third party to do any of the foregoing.



**IV. Customer Obligations.**

- A. Customer represents and warrants to Tempus it will only use the Software and the Software License for Customer's bona fide, lawful business purpose and only in accordance with the Tempus Appendix, this Software Exhibit, applicable laws Customer is responsible for each Registered User's compliance with the Tempus Appendix and this Software Exhibit
- B. Customer must use commercially reasonable efforts to prevent unauthorized access to or use of the Software, and notify Tempus promptly of any such unauthorized access or use, and government regulations, and any applicable Network Rules, as applicable

**V. Impermissible Use.** Tempus shall have no responsibility or liability arising out of any of the following, (each an **"Impermissible Use"**): (i) Customer's use of Software (or any portion thereof) in any manner not expressly permitted under this Software Exhibit or a Tempus Schedule, including Customer's failure to use Software in compliance with all applicable laws and Network Rules; (ii) for any activity other than Customer's legitimate business purpose, including for any fraudulent or illegal purpose; (iii) Customer's independent assembly, configuration, or modification of Software (or any element, step, component, process, system, or portion thereof) or using Software in combination with other products, services, methods or systems (including software or equipment) in a manner or method not previously disclosed and approved by Tempus in writing, and (iv) any changes of Software done by Customer, any Provider, or any other third party. For clarity, changes, updates, or other modifications done by or otherwise required by Tempus is not considered an Impermissible Use under this paragraph.

**VI. Software Warranty; Limitation of Liability**

- A. Software Warranty. Tempus warrants that the Software will be free from material defects in materials and workmanship under normal use (the **"Software Warranty"**). In the event of any breach or alleged breach of this Software Warranty, Customer shall promptly notify Tempus in writing within ten (10) days of becoming aware of any defect in the Software. Tempus's sole and exclusive liability and Customer's sole and exclusive remedy for breach of the Software Warranty shall be, at Tempus's sole discretion, to repair or replace the Software that does not meet this Software Warranty.
- B. Limitation of Liability. The Software Warranty shall not apply and Tempus shall have no obligation to remedy the Software if the defect in the Software is caused by (i) an Impermissible Use by Customer or any third party other than Tempus, (ii) use of the Software in an operating environment not approved by Tempus, or (iii) defects in the Software that are the result of accident, abuse, or unauthorized use by a party other than Tempus, including any breach or compromise of an Access Credential.

**VII. DISCLAIMER:** EXCEPT AS EXPRESSLY SET FORTH IN THIS SOFTWARE EXHIBIT, TEMPUS MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTEES, EXPRESS OR IMPLIED, ORAL, OR WRITTEN, WITH RESPECT TO THE SOFTWARE OR ANY SOFTWARE VERSION, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. TEMPUS DOES NOT WARRANT OR MAKE ANY GUARANTEE THAT THE SOFTWARE IS OR WILL BE SECURE, ERROR-FREE, OR BUG-FREE, OR THAT IT WILL PERFORM UNINTERRUPTED OR THAT IT WILL ALWAYS BE AVAILABLE.