

**TNSPay GATEWAY SERVICES AGREEMENT**

This TNSPay Gateway Services Agreement (“Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_, 2014 (“Effective Date”) by and between Transaction Network Services, Inc. (“TNS”), a Delaware corporation having a principle place of business located at 10740 Parkridge Blvd., Suite 100 Reston, Virginia, 20191, and Mobile Authentication Corporation, a Delaware corporation, having a principle place of business located at 8777 East Via de Ventura, Suite 280 Scottsdale, Arizona 85258 (“Reseller”).

This Agreement is entered into by TNS and Reseller for the purpose of setting forth terms and conditions upon which Reseller will resell the TNSPay Gateway Services (“Services”) to its merchants (“Merchants”). Reseller has the right and responsibility to market, sell and support, on a non-exclusive basis, the products and services as more fully defined in Schedule 2 of this Agreement. Such attachments are an integral part of this Agreement. When used herein, the defined term “Agreement” shall include this Agreement and all attachments, schedules and addenda hereto. Reseller may sell the Services solely to Merchants located in the United States in accordance with the terms and conditions herein. Reseller must at all times during the term of this Agreement be able to demonstrate the Services to prospective Merchants at Merchant locations and to provide post-sales support.

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Term. The term (“Initial Term”) of this Agreement shall be for a period of thirty-six (36) months, commencing on the Effective Date, and shall renew automatically for successive renewal periods of twelve (12) months each (“Renewal Term”), unless (a) terminated sooner in accordance with the provisions herein, or (b) either party terminates this Agreement by giving written notice of termination to the other at least sixty (60) days prior to the effective date of any such Renewal Term.
2. Pricing.
   1. Prices for the Services are set forth in the attachment(s) hereto. In connection with the Services provided to Reseller by TNS, Reseller agrees to pay TNS the fees and charges relating to such Services set forth in such attachment(s). All fees and charges are in U.S. Dollars and are exclusive of any applicable Taxes (as such term is defined in Paragraph 2.3 below), which, subject to Paragraph 3.3, will be separately stated and included on each monthly invoice. The prices also do not include, and TNS may impose (or pass through) additional fees and charges on Reseller to recover, fees and charges imposed on the provision of the Services as a result of any Regulatory Activity (as such term is defined in Paragraph 2.3 below).
   2. In the event there is a change in Reseller’s Services requirements which results in an increase in equipment provisioning or facility costs, TNS reserves the right to change the prices for the Services to account for any such increase during any term of this Agreement.
   3. For purposes of this Agreement, “Taxes” means any and all applicable foreign, federal, state and local taxes, including without limitation all use, sales, value-added, surcharges, excise, franchise, property, commercial, gross receipts, license privilege or other similar taxes, levies, surcharges, duties, fees, or other tax-related charges, whether charged against Reseller or TNS, with respect to the Services and any facilities provided by TNS, but excluding taxes imposed on TNS’ revenues or net income. For purposes of this Agreement, “Regulatory Activity” means any regulation and/or ruling, including modifications thereto, by any governmental or quasi-governmental authority, including, without limitation, universal service fund programs (state and federal) however, Reseller shall in no way be responsible for the payment of fines or any levies imposed upon TNS by such authorities as a result of Regulatory Activity which is not the direct result of Reseller’s activities or use of the Services. In the event that TNS becomes notified by any regulatory authority of the threat of a fine, levy or a detrimental effect to TNS’ supplying of Services to Reseller, TNS shall notify Reseller. Reseller may, at its option and expenses (including payment of any fees and/or charges imposed upon TNS in connection with the provision of Services to Reseller) have the right participate in any legal challenge to such assessment or to protest any action, fine or levy that TNS claims will be passed through to Reseller as a result of Regulatory Activity. The parties acknowledge that any effect Regulatory Activity has on the Services may result in an adjustment or modification to this Agreement including, but not limited to, modification of the fee structure.
3. Billing and Payment.
   1. Reseller shall pay TNS all charges as and when due under this Agreement, without deduction or setoff. Reseller shall have the right to dispute any amount so invoiced and must notify TNS in writing of its dispute within sixty (60) days of the receipt of such invoice or the dispute shall be waived. A copy of the written notification of disputed charges plus any documentation supporting Reseller’s claim shall be forwarded to TNS at the address set forth in this Agreement. Any disputed charges resolved in favor of Reseller shall be credited to Reseller’s account on the next invoice following resolution of the dispute. Any disputed amounts determined to be due and payable to TNS shall be due within ten (10) days of the resolution of the dispute.
   2. All payments shall be mailed to the TNS address stated on the bill. Bills will be issued monthly and are payable within thirty (30) days from the date shown on the invoice. Commencing upon the day after the due date of the bill, interest shall be due and payable by Reseller to TNS at the rate of 1.5% per month or the maximum legal rate, whichever is lower, on any undisputed portion of the bill which has not been paid. Payments will be applied first to the oldest outstanding amounts.
   3. Reseller agrees to pay any Taxes due on the Services, unless Reseller provides a valid tax exemption certificate. Should any federal, state or local jurisdiction determine that Taxes that have not been billed by TNS (and interest, penalty and/or surcharges thereon) are due on the provision of any Services provided under this Agreement, TNS shall so advise Reseller and Reseller shall be liable for any such Tax, interest, penalty and surcharge. However, if the Reseller disagrees with the assessment of any such additional Tax, penalty, surcharge and interest, the Reseller shall, at its option and expense (including payment of any such assessment prior to final resolution of the issue), have the right to protest the assessment and participate in any legal challenge to such assessment, but shall be liable for any Tax, penalty, surcharge and interest ultimately determined to be due, specifically limited to that amount of Reseller’s protest and not TNS’ or any other third parties’ similarly situated and protesting the same tax, penalty, surcharge and interest assessment. TNS shall, when requested by Reseller and at Reseller’s expense, cooperate with Reseller in any such protest or legal challenge.
4. Suspension of Access and Termination.
   1. Suspension/Termination of Access to Services
      1. Reseller acknowledges and agrees that TNS will be required from time to time to suspend access to the Services to undertake investigations, maintenance, repair faults and/or implement upgrades and updates to the Software. TNS shall, at any time such a suspension can be scheduled in advance, reasonably notify Reseller of the time and duration of suspension of Services with enough time for Reseller to make notification to its personnel and customers as described in the Service Schedule 2. Unscheduled disruptions of the Services without warning that are not subject to exception under paragraphs 4.1.2, 4.1.3, or 13.5 of this Agreement will be subject to the terms set forth in the Service Level Agreement as described in Section 6 of Service Schedule 2
      2. Reseller understands and agrees that TNS reserves the right to suspend access to the Services without any penalty and/or liability whatsoever as TNS reasonably considers necessary including in the following instances:
      3. where TNS reasonably considers that their continued access will damage or otherwise interfere with the Services or TNS’ ability to provide services to other Resellers ; and
      4. where TNS reasonably suspects or considers that there has been fraudulent, illegal, use by any party of the Services whether in control of the Reseller or otherwise.
      5. Reseller understands and agrees that TNS may terminate or suspend the provision of the Services, without any penalty and/or liability whatsoever, at any time due to failure, termination, delay or other default of any Third Party Processor, as defined in Paragraph 4.2 below. TNS will use all commercially reasonable efforts to have any Third Party Service available when required and notify Reseller of any suspension or termination of the Services.
   2. Termination of the Agreement.
      1. Except as otherwise provided herein, if Reseller fails to pay any outstanding charges within ten (10) days after receipt of written notice from TNS of delinquency, or if Reseller fails to perform or observe any other material term or condition of this Agreement within thirty (30) days after receipt of written notice from TNS of such failure, TNS may terminate this Agreement. Reseller shall then be liable for all charges incurred as of the date of termination and any termination charges set forth in this Agreement.
      2. Except as otherwise provided herein, if TNS fails to perform or observe any material term or condition of this Agreement within thirty (30) days after receipt of written notice from Reseller of such failure, Reseller may terminate this Agreement. Except for charges incurred as of the date of termination, Reseller shall have no further financial obligations to TNS under this Agreement.
      3. If Reseller cancels or terminates this Agreement or the Services provided hereunder before the completion of the Initial Term or any Renewal Term for any reason whatsoever other than pursuant to Paragraph 4.2.2 above [TNS Comment: The requested change is not necessary as the sentence already limits the applicability of termination fees to cancellation “before the completion of the Initial Term or any Renewal Term” If Reseller provides prior written notice of non-renewal then termination fees would not apply.], Reseller agrees to pay TNS the following sums within thirty (30) days of Resellers receipt of an invoice therefore from TNS: (i) any disconnection, early cancellation, termination or other charges paid by TNS to third parties which arise as a result of such cancellation or termination, (ii) the unsatisfied portion of any minimum commitments contained in this Agreement, and (iii) an amount equal to all recurring charges specified in this Agreement which would have become due and payable by Reseller to TNS for the balance of the then current term if such cancellation or termination had not occurred. Upon notification by Reseller within the given time period to allow this Agreement to expire as set forth in paragraph 1, Reseller agrees to pay TNS for all charges incurred as of the final termination date, including but not limited to the final invoice for the last month of Services subject to Reseller’s review of the charges and subject to Reseller’s right to dispute any charges as set forth in paragraph 3.1. Reseller’s rights to dispute and the parties’ obligation to resolve any such dispute over charges and fees as set forth in paragraph 3.1 shall survive the expiration of this Agreement as well as paragraph 13.1 including the arbitration and legal fees provisions.
      4. TNS may terminate any Service as it relates to a specific Third Party Processor hereunder without liability or penalty, by notice in writing, if any of its rights under any agreement between TNS and the specific Third Party Processor, which rights are necessary for TNS to fulfill its obligations under this Agreement are terminated for any reason. For purposes of this Agreement, the term “Third Party Processor” shall mean a third party, which is not a party to this Agreement and which provides those services which process payments. Such payment processing services are not part of the Services supplied by TNS. Any other third party agreements that TNS relies upon, other than Third Party Processor agreements for the provision of Services to Reseller, shall not be terminated by TNS where the Services to Reseller or to Reseller’s customers are affected in any material way without adequate notice to Reseller in advance of termination or change in provider. Any detrimental effect on the Services and subsequent liabilities or penalties for such third party termination(s) other than Third Party Processor terminations by TNS shall not be relieved by this paragraph. Reseller reserves the right and may, upon notice and thirty days for TNS to cure, terminate this Agreement without penalty or liability: (i) if a third party provider TNS proposes to substitute for an existing third party provider of some level of service is a competitor of Reseller, or (ii) or is a party, in Reseller’s sole discretion, to whom Reseller cannot reveal Confidential technical or business information including, but not limited to, proprietary intellectual property, business methods or customer data.
5. Reseller Responsibilities.
   1. Reseller must:
      1. complete the appropriate testing and implementation processes as determined by TNS;
      2. cooperate with TNS’ authorized contractors as reasonably requested by TNS from time to time;
      3. observe and comply with all applicable Laws in Reseller’s access and use of the Services, personal information and cardholder information supplied by TNS to Reseller; and
      4. notify TNS immediately on becoming aware of any breach of security or fraudulent Transaction. For purposes of this Agreement, a “Transaction” means any operation submitted by Reseller or Reseller's Merchants (including Reseller's Merchant's End Users) to the TNSPay Gateway that results in an action with a payment processor or acquirer.
   2. If Reseller permits any third party to access to the Services, Reseller shall defend, indemnify and hold harmless TNS and any affiliated and subsidiary companies of TNS, and its directors, employees, officers, agents, subcontractors and suppliers of all of them from and against all liabilities and costs (including reasonable attorney’s fees) arising from any and all claims by any such third party in connection with the Services, regardless of any form of action, whether in contract, tort (including TNS’ active or passive negligence), warranty, strict liability. However, Reseller shall have no obligation to indemnify and defend TNS against claims for direct damages to real or tangible personal property, or for bodily injury or death, proximately caused by TNS’ negligence.

* 1. If TNS gives Reseller written notice of any terms and conditions of use or any warning notices which it requires to be displayed to End-Users, Reseller must ensure that they are so displayed in accordance with TNS’ reasonable directions. For purposes of this Agreement, the term “End User” means the originator of a Transaction, including a Credit Card holder, who has a legal relationship with Reseller and/or Reseller’s Merchants.
  2. Reseller acknowledges and agrees that failure to meet Reseller’s obligations under this Paragraph 5 may result in:
     1. the suspension of access to the Services or Termination of this Agreement; and/or
     2. a degradation of the Services, or failure of those Services to operate in accordance with the applicable service guidelines.
  3. TNS may charge and Reseller agrees to pay, TNS’ the then current time and material fees where TNS reasonably determines that a fault or support issue has been caused by Reseller’s failure to meet Reseller’s obligations under Paragraph 5.1.
  4. Reseller shall use the Services only for lawful purposes. To the extent deemed necessary by Reseller, Reseller shall implement security procedures necessary to limit access to the Services to Reseller’s authorized users and shall maintain a procedure external to the Services for reconstruction of lost or altered files, data or programs.
  5. Reseller understands and agrees that only Reseller shall be entitled to receive technical support, as set forth in Schedule 2, and that Reseller is solely responsible for providing technical and any other customer support to its Merchants. as well as adequate manpower to handle support the Merchants.
  6. Reseller shall employ sales, technical support, and maintenance organizations, employees of which shall be full-time direct employees of Reseller who sell, install, secure acceptance of, and maintain the Services described herein. Reseller agrees to maintain adequate manpower and facilities to ensure prompt handling of inquiries and orders for the Services. Reseller also agrees to have appropriate Reseller sales and technical support personnel available for training by TNS with respect to the Services herein. Replacement or hiring of personnel by Reseller is, however, at the sole discretion of Reseller. TNS’ opinion of Reseller’s employment of its employees and the completion of any training regimen shall not constitute a material breach of this Agreement.
  7. Reseller agrees to reimburse TNS for reasonable documented out-of-pocket costs incurred by TNS for any Services ordered by Reseller, but canceled before installation, for changes in delivery instructions, or for the relocation of TNS equipment at Reseller’s request.
  8. Reseller shall keep full, true, and accurate records and accounts, in accordance with generally-accepted accounting principles, of the Services purchased and deployed, resold, or distributed to its Merchants. Reseller shall make these records available for audit by TNS upon fifteen (15) days prior written notice, during regular business hours, at Reseller‘s principal place of business or such other of Reseller’s location where Reseller may maintain relevant records. In the event TNS requires information from a Merchant to which Reseller asserts it has resold TNS Services, Reseller agrees to use its best efforts to assist TNS in obtaining such information.
  9. Reseller represents and warrants that: (i) the full legal name of the legal entity intended to receive the benefits and Services under this Agreement is accurately set forth herein; (ii) the person signing this Agreement has been duly authorized to execute this Agreement on Reseller’s behalf; and (iii) the execution hereof is not in conflict with any law, Reseller’s charter or bylaws, or any agreement to which the Reseller is bound. TNS may act in reliance upon any instruction, instrument, or signature reasonably believed by TNS to be genuine. TNS may assume that any employee of Reseller who gives any written notice, signs any order form or provides any other instruction in connection with this Agreement has the authority to do so.

1. Transaction Information.
   1. Reseller is responsible for the accuracy, quality and standard of all information provided to TNS by Reseller under this Agreement.
   2. Reseller acknowledges that TNS may use /Reseller’s Transaction Information to ensure Reseller has complied and is complying with Reseller’s obligations under this Agreement, and as otherwise permitted by Reseller (such permission not to be unreasonably withheld) on request from TNS from time to time. For purposes of this Agreement, the term “Transaction Information” shall mean payment information, including credit card details, Reseller’s Details and the payment amount, received by TNS relating to a transaction.
   3. Reseller acknowledges and agrees that TNS will monitor, record, collect, store, maintain, use and copy Transaction Information and/or metadata and other statistical data, which it will derive from the Transaction Information on behalf of Reseller.
2. Security.
   1. Reseller acknowledges and agrees that Reseller is responsible for the:
      1. security of cardholder data that Reseller possesses;
      2. suitability of Reseller’s computer system, web browser and network connectivity for access to and use of the Services; and
      3. compliance with and adherence to the requirements of all reasonable security and operational procedures which TNS or a financial institution may require of Reseller, including the Payment Card Industry Data Security Standard (PCI-DSS).
   2. Reseller acknowledges and agrees that TNS will not be responsible for any failure by Reseller or Customer’s Merchants to comply with any of the provisions of this Section 7
   3. TNS acknowledges and agrees that TNS is responsible for compliance with the PCI DSS, where applicable.
3. Indemnity.

Reseller acknowledges and agrees that TNS is not responsible and accepts no liability for, and Reseller releases TNS from and will indemnify, defend and hold harmless TNS from and against all demands, claims, actions, proceedings, liabilities, judgments, awards, assessments, damages, losses, costs and expenses including legal costs in respect of:

* + 1. suspension of access or termination in accordance with this Agreement or any Services thereunder;
    2. any fraud or unauthorized conduct committed using the Services (not including conduct by TNS or its officers, employees, agents or contractors);
    3. the content of any Transaction or Transaction Information which utilizes the Services;
    4. use of the Services by Reseller or Reseller’s Merchants use of the Services;
    5. any act of dishonesty (including fraud) committed by Reseller, Reseller’s officers, employees, agents or contractors or any third party whose access to any software, system or service is gained by way of Reseller or /Reseller’s network or Reseller’s Merchants; or
    6. any claim by a third party including access to Merchant Transaction Details or any Transaction Information.

1. Intellectual Property.
   1. TNS hereby grants to Reseller a personal, nonexclusive, nontransferable license during the term of this Agreement to use, all documentation, application programming interfaces and software in object code form (collectively “Licensed Material”) which may be furnished to Reseller under this Agreement. Reseller agrees to use its best efforts to ensure that its employees and users of all Licensed Material hereunder comply with the terms and conditions set out in this Agreement. Reseller also agrees to refrain from taking any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent to the software. All Licensed Material furnished to Reseller under this Agreement shall be used by Reseller only to support Reseller or Reseller’s Merchants’ use of the Services and shall not, without TNS’ prior written consent, be reproduced or copied in whole or in part, except for two (2) backup or archival copies, shall not be removed from the United States, and shall be returned to TNS at the conclusion of the term of this Agreement.
   2. TNS shall defend, indemnify, and hold Reseller harmless, at the expense of TNS, against any claims, actions or suits brought against Reseller based on a claim of infringement of any United States patent or copyright arising out of use by Reseller of the Services. TNS shall pay all costs, damages and expenses (including reasonable outside counsel attorneys’ fees) in any such suit, provided that TNS is notified promptly in writing of the suit, and Reseller at TNS’ expense is available to assist in the defense. If a final injunction is obtained against TNS prohibiting the use by Reseller of the Services due to infringement of a United States patent or copyright, TNS will, at its option, either (i) procure the right for the Reseller to continue using the Services, or (ii) direct Reseller to return any TNS materials in its possession relating to the infringing Services at the expense of TNS. In the case of (ii), Reseller will have the right to terminate this Agreement, and TNS will repay to Reseller any charges paid to TNS in advance, prorated to the date of termination. Notwithstanding the above, TNS will have no obligation under this Paragraph 9 to the extent that: (1) any infringement is caused or contributed by Reseller, (2) Reseller has combined, operated or used services, equipment or software not contemplated by this Agreement or any Attachment with any other devices or programs not authorized by TNS, or (3) Reseller has modified Services in a manner that has not been authorized in writing by TNS. This Paragraph 9 provides the sole and exclusive obligations and remedies of the parties in connection with any third party claims, actions, suits, or other demands described in this Paragraph 9 or which otherwise asserts a violation of a third party’s intellectual property rights.
2. Warranty and Limitation of Liability.
   1. UNDER THIS AGREEMENT, TNS PROVIDES SERVICES, NOT GOODS. TNS WARRANTS THAT IT WILL PERFORM THESE SERVICES IN A WORKMANLIKE MANNER. PRODUCTS OR SERVICES SOLD OR PROVIDED UNDER ANOTHER CONTRACT ARE GOVERNED SOLELY BY THE TERMS OF THAT CONTRACT, INCLUDING ANY WARRANTIES, GUARANTEES, OR OTHER OBLIGATIONS OF TNS UNDER THAT CONTRACT. TNS MAKES NO OTHER WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT, AND TNS EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
   2. FOR PURPOSES OF THIS PARAGRAPH 10, TNS INCLUDES TNS AND ANY AFFILIATED AND SUBSIDIARY COMPANIES OF TNS, AND THE DIRECTORS, EMPLOYEES, OFFICERS, AGENTS, SUBCONTRACTORS AND SUPPLIERS OF ALL OF THEM.
   3. TNS’ LIABILITY TO RESELLER ON ACCOUNT OF ANY ACTS OR OMISSIONS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AGGREGATE AMOUNT NOT TO EXCEED AN AMOUNT EQUAL TO THE AMOUNT PAID BY RESELLER TO TNS DURING THE MONTH PRECEDING THE MONTH IN WHICH THE CAUSE OF ACTION AROSE. HOWEVER, NOTHING IN THIS PARAGRAPH 10.3 LIMITS TNS’ LIABILITY FOR DIRECT DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY, OR FOR BODILY INJURY OR DEATH, PROXIMATELY CAUSED BY TNS’ GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
   4. NEITHER TNS NOR RESELLER SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, PUNITIVE OR SPECIAL DAMAGES, INCLUDING LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST PROFITS, LOST SAVINGS OR LOST REVENUES, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED HOWEVER THAT NOTHING CONTAINED IN THIS PARAGRAPH 10.4 SHALL LIMIT RESELLER'S LIABILITY TO PAY ANY CHARGES, FEES AND/OR AMOUNTS DUE HEREUNDER FOR SERVICES ACTUALLY PROVIDED BY TNS TO RESELLER PURSUANT TO THE TERMS HEREOF.
   5. THESE LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND, WHETHER ACTIVE OR PASSIVE, AND SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.

* 1. TNS SHALL NOT BE LIABLE FOR (A) SERVICE IMPAIRMENTS CAUSED BY ACTS WITHIN THE CONTROL OF RESELLER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUPPLIERS OR LICENSEES OR (B) INTEROPERABILITY OF SPECIFIC RESELLER APPLICATIONS.
  2. RESELLER ACKNOWLEDGES AND AGREES THAT:
     1. PERFORMANCE OF THE SERVICES IS DEPENDENT ON A NUMBER OF FACTORS OUTSIDE TNS’ CONTROL, INCLUDING COMMUNICATIONS NETWORKS, THE INTERNET, THIRD PARTY BROWSER, SECURITY OR MESSAGING SOFTWARE, AND SYSTEMS OPERATED BY FINANCIAL INSTITUTIONS;
     2. TNS IS NOT RESPONSIBLE FOR AN INTERRUPTION OR FAILURE OF THE SERVICES, CAUSED BY FAILURE OR INTERRUPTION CAUSED BY A FORCE MAJEURE EVENT AS DEFINED IN SECTION 13.5;
     3. ALTHOUGH TNS USES REASONABLE COMMERCIAL EFFORTS DIRECTED TOWARDS THE INTEGRITY OF DATA HELD ON THE HOSTED SERVER AND THE TRANSMISSION OF TRANSACTION INFORMATION, THESE MEASURES HAVE INHERENT RESTRICTIONS AND TECHNICAL LIMITATIONS WHICH MAY BE EXPLOITED; AND TNS IS NOT RESPONSIBLE FOR PAYMENT AND PAYMENT CLEARANCE, AND PAYMENT AND PAYMENT CLEARANCE ARE ON THE TERMS AND CONDITIONS OF EACH RELEVANT FINANCIAL INSTITUTION.

1. Confidentiality.
   1. All tangible technical or business information disclosed by one party to the other party and identified as proprietary shall be deemed the property of the disclosing party and shall be returned upon request. The receiving party shall: (i) hold such information in confidence for three (3) years after any termination of this Agreement; (ii) restrict disclosure of such information solely to its employees and employees of its affiliated companies with a need to know; and (iii) use the same degree of care as it uses for its own proprietary information to prevent the unauthorized disclosure, use or publication of such proprietary information.
   2. The receiving party shall have no obligation to preserve the confidentiality of any information which: (i) was previously known to the receiving party or any of its affiliated companies free of any confidentiality obligation; (ii) is disclosed to third parties by the disclosing party without restrictions; (iii) becomes publicly available by means other than unauthorized disclosure; or (iv) is independently developed by the receiving party.
   3. The pricing, terms and conditions of this Agreement are proprietary information and shall be treated in confidence.
   4. The receiving party agrees that any violation of any provision of this Paragraph 11 shall cause immediate and irreparable harm to the disclosing party and, in such event, an injunction restraining the receiving party from such violation may be entered against it, in addition to any other relief available to the disclosing party.
2. Records & Inspection.
   1. Each party must keep true and correct records in sufficient detail to enable the other party to verify its compliance with this Agreement; and Reseller must permit TNS to access Reseller’s premises during usual business hours with reasonable notice to examine the records (including financial records) relevant to transactions conducted using the Services or to its obligations under this Agreement (as the case may be); provided that TNS shall take all reasonable steps to ensure that any inspection conducted under this clause causes minimal disruption to Reseller’s conduct of business.
3. General.
   1. Reseller and TNS shall make a good faith effort to settle any disputes that may arise with respect to the terms and conditions or any subject matter referred to in or governed by this Agreement within sixty (60) days from the date the dispute is first discussed between the parties. If such dispute cannot be so settled through each party’s respective escalation procedures, then the parties agree to submit the matter to binding arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration hearing shall be conducted in Washington, D.C., unless Reseller and TNS mutually agree to another location. All arbitration costs including reasonable outside counsel attorneys’ fees shall be paid by the non-prevailing party. The parties agree to be bound by the decision and award of the arbitration. Notwithstanding these dispute resolution provisions, either party may exercise all rights and remedies to seek and obtain injunctive and/or other equitable relief from any court of competent jurisdiction.
   2. Any legal action arising from or in connection with this Agreement, or any Services provided or work performed hereunder, must be brought within two (2) years after the cause of action accrues.
   3. Nothing in this Agreement shall create or vest in Reseller any right, title, or interest in the Services, other than the right to use the Services under the terms and conditions of this Agreement.
   4. TNS’ performance obligations under this Agreement shall be solely to Reseller and not to any third party. Other than as expressly set forth herein, this Agreement shall not be deemed to provide third parties with any remedy, claim, right of action, or other right.
   5. Neither party shall have any liability for damages or delays due to fire, explosion, lightning, power surges or failures, strikes or labor disputes, water, acts of god, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure products or transportation facilities, fuel or energy shortages, acts or omissions of communications carriers or suppliers, or other causes beyond its control whether or not similar to the foregoing (each a “Force Majeure Event”). The period of performance shall be extended to such extent as may be appropriate, not to exceed the period of delay, after the cause of the delay has been removed. If the condition that causes an excusable delay or failure to perform lasts longer than forty-five (45) days, either party may terminate the affected attachments upon three (3) business days prior written notice. Except for fees for Services rendered under this Agreement, neither party shall have further financial obligation or liability for such termination.
   6. Neither party shall publish or use any advertising, sales promotions, press releases or other publicity which uses the other party’s name, logo, trademarks or service marks without the prior written approval of the other party, which approval shall not be unreasonably withheld.
   7. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without giving effect to the conflicts of laws principles thereof.
   8. Any assignment by either party of any right, obligation or duty, in whole or in part, or of any other interest hereunder, without the written consent of the other party, shall be void except assignments to a parent company, a wholly-owned subsidiary, or a wholly-owned subsidiary of a parent. All obligations and duties of any party under this Agreement shall be binding on all successors in interest and assigns of such party. TNS may subcontract any or all of the work to be performed by it under this Agreement, but shall retain responsibility for the work that is subcontracted.
   9. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given delivered when sent by registered or certified mail, return receipt requested, or by reputable courier as evidenced by a delivery receipt, to each party’s respective address as set forth in the Agreement. The parties may change the addresses on five (5) days prior written notice.
   10. It is expressly understood and agreed that neither party hereto is an employee, agent or legal representative of the other, and unless specifically authorized in writing to do so, may not incur any obligations on behalf of or in the name of the other. This Agreement does not create either a partnership or joint venture between TNS and Reseller.
   11. If any portion of this Agreement is found to be invalid or unenforceable, the remaining portions shall remain in effect and the parties will begin negotiations for a replacement of the invalid or unenforceable portion.
   12. The expiration or termination of this Agreement shall not relieve either party hereto of those obligations that by their nature are intended to survive.
   13. This is the entire agreement between the parties with respect to the Services provided hereunder and it supersedes all prior agreements, proposals, representations, statements or understandings, whether written or oral, concerning the Services. No change, modification or waiver of any of the terms of this Agreement shall be binding unless included in a written agreement and signed by both parties. In the event there is a conflict between the terms and conditions of this Agreement and any attachment, schedule or addendum thereto, the terms and conditions of such attachment, schedule or addendum shall prevail over the terms and conditions of this Agreement.
   14. This Agreement may be executed in one or more counterparts, all of which (when executed and delivered) shall be considered one and the same Agreement and shall become effective when one or more counterparts have been signed by each party and delivered by each party to the other party, it being understood that both parties need not sign the same counterpart.  Counterparts may be delivered by facsimile or other electronic transmission method (including .pdf) and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Both parties hereto represent that they have read this Agreement in its entirety, understand it and agree to be bound by all the terms and conditions stated herein.

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| --- | --- |
| **Transaction Network Services, Inc. (“TNS”)** | **Mobile Authentication Corporation (“Reseller”)** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: ­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| TNS Contact Person:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Phone Number: ( ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  E-Mail\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Copy of Notices to:  Transaction Network Services, Inc.  ATTN: General Counsel  10740 Parkridge Blvd.  Suite 100  Reston, Virginia 20191  Phone: (703) 453-8300  Fax: (703) 453-8397 | Reseller Contact Person:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ E-Mail\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Copy of Notices to:  Michael J. Tarutis, Esquire  49 South 14th Street  Pittsburgh, PA 15203  412-315-1091 |

**SCHEDULE 1**

**Schedule of Fees**

Reseller shall be charged a one (1) time only Integration Fee in the amount of $35,000 for development pursuant to the terms set forth in the Statement of Work (“SOW #1”) for the Initial Development Project, set forth in Schedule 3 to this Agreement. Reseller shall pay TNS $20,000 upon execution of this Agreement. TNS will invoice Reseller in the amount of $15,000 once the development of the interface with MAC’s OTP system is complete and made available by TNS to Reseller to transmit one-time phone authentication requests in the TNSPay Gateway User Acceptance Testing (UAT) environment pursuant to the SOW #1.

Reseller shall have a minimum monthly revenue commitment (“MMRC”) in the amount of $5,000.00 for the TNSPay Gateway Services beginning three (3) months after the integration code defined in the SOW is successfully implemented within the TNSPay Gateway production environment and continuing through the remainder of the Initial Term and any Renewal Term of the Agreement. If Reseller’s actual expenditures for the TNSPay Gateway Services (excluding taxes, regulatory charges or third party pass-through expenses) under the Agreement at the end of the applicable month do not equal or exceed the applicable MMRC, then Reseller shall pay the difference between Reseller’s actual expenditures for the TNSPay Gateway Services during the applicable month and the applicable MMRC within thirty (30) days after receiving an invoice from TNS for such difference.

For purposes of this Pricing Schedule, a Transaction is defined as any operation submitted by Reseller or Reseller’s Merchant (including Reseller’s Merchant’s End-Users) to the TNSPay Gateway that results in an action with a payment processor or acquirer. Operations can be submitted to the TNSPay Gateway via the TNSPay API, Hosted Payment Forms, Web Portals, or other input methods as may be provided over time. Operations that are considered Transactions may include, but are not limited to Authorizations, Captures, Purchases, Voids, Reversals, and Refunds. Operations initiated with a token that result in an action with a processor or acquirer are considered Transactions.

The Transaction Fee shall be charged for all Transactions that meet the definition above, regardless of the response from the payment processor or acquirer. Transactions become billable at the time the approval, decline or other processor response code is transmitted back to the Reseller or Reseller’s Merchant from the TNSPay Gateway.

The Transaction Fee included in this Pricing Schedule is for credit card processing only.  Processing of any alternative payments shall be covered in a separate pricing schedule as applicable.

**TNSPay Gateway Transactions**

TNS will aggregate all of Reseller’s Transactions on the TNSPay Gateway for purposes of determining Reseller’s Domestic monthly transaction volume (“Monthly Transaction Volume”). All Transactions during the applicable month shall be billed at the transaction rate of the tier applicable to the Monthly Transaction Volume for such month according to the following:

|  |  |
| --- | --- |
| Monthly Transaction Volume | Per Transaction Fee |
| 0-1,000,000 | $0.035 |
| 1,000,001 to 2,000,000 | $0.030 |
| 2,000,001 to 4,000,000 | $0.025 |
| 4,000,001 to 6,000,000 | $0.022 |
| More than 6,000,000 | $0.018 |

**SCHEDULE 2**

**TNSPay Gateway Services Guidelines**

Section One: Introduction

The purpose of this document is to describe the TNSPay Gateway Service and outline each party’s responsibilities and requirements.

This document describes the TNSPay Gateway Service, which the Reseller may resell to its Merchants.

Section two: TNSPay Gateway Hosted processing

# **Overview of TNSPay Gateway Hosted Processing**

# TNS provides a payment gateway service (“***TNSPay Gateway”***) that enables communication between the Reseller’s Merchants and a financial institution(s) for the processing of Transactions. It requires:

### an interface to a financial institution(s) transaction processing platform from the Merchant’s payment application.

### a unique Merchant Profile loaded on the TNSPay Gateway Service. The Merchant Profile is configured by the Reseller to allow the Merchant to access the TNSPay Gateway Features that the Merchant has purchased from the Reseller. It holds the configuration details and access credentials related to:

#### a single bank merchant number; and/or

#### a single Diners Club merchant number; and/or

#### a single Amex merchant number; and/or

1. a single Discover merchant number; and/or
2. a single JCB merchant number; and/or
3. a single Paypal account ID.

# The TNSPay Gateway is comprised of four (4) main elements each with its own suite of Features:

### Access Methods;

### Transaction Processing;

### Merchant Administration and Reporting; and

### Documentation.

# The TNSPay Gateway has a variety of Access Methods:

### via the Merchant Administration Feature (accessed by a web browser) to manually key enter Transactions or Refunds; and

1. via the Merchant Manager Feature (accessed by a web browser) to create and manage merchant accounts ; and

### via the TNSPay Gateway application programming interface (“API”) for automated processing interaction; and

### via the Hosted Payments pages for TNS hosted processing interaction; and

1. via the Hosted Payment form processing interface.

# Access provided using the TNSPay Gateway API or Hosted Payments Pages offers the following transaction styles:

### The TNSPay Gateway API:

#### The Merchant collects Credit Card details from the Merchant’s End Users via any Merchant application, such as a Merchant shop, a buy application or a call center operation.

1. Hosted Payment Form:

#### The Merchant does not receive the Credit Card details. The Merchant’s End User submits Credit Card details from their web browser to the TNSPay Gateway where they are temporarily stored and used in conjunction with additional information to process the payment.

1. Hosted Payment Pages:

#### The Merchant does not receive Credit Card details. The Merchant’s End User is redirected from the Merchant’s website to the TNSPay Gateway server where the Merchant is required to provide additional information to process the payment, including Credit Card details.

1. Batch File:

The Customer compiles transaction data or TNSPay Tokenization data in a defined TNSPay supported format and sends the batch of transactions to the TNSPay Gateway server through a defined file transfer protocol.

# Access provided using Merchant Administration offers the following transaction style for credit card processing:

### 'MOTO Payments':

#### Merchant collects Credit Card details from the Merchant’s End Users and processes them by entering the Transaction details and initiating the payment through Merchant Administration.

# **Transaction Processing**

# General processing allows all Merchant Profiles types to:

#### send and receive Transaction messages from the Merchant’s Supported Financial Institution for the authorization of Credit Cards;

#### accept payments via Supported Credit Cards;

#### process Transactions using the TNSPay Gateway API, Hosted Payment Pages or Hosted Payment Form, or Merchant Administration;

#### process Refunds using Merchant Administration or Advanced Merchant Administration.

# Additional processing Features, which may be added to the Reseller Merchant Profile include:

### Multicurrency: allows Transaction processing in multiple supported currencies.

### Verified by Visa: allows access to the Verified by Visa program, sometimes referred to as ’3-D Secure’, which seeks to authenticate a Visa cardholder’s identity prior to ‘authorizing’ a Transaction. Where possible, "Authentication" is achieved by the cardholder inputting a password prior to the Transaction processing.

### MasterCard SecureCode: allows access to the MasterCard SecureCode program, sometimes referred to as ’3-D Secure’, which seeks to authenticate a MasterCard holder’s identity prior to ‘authorizing’ a Transaction. Where possible, "Authentication" is achieved by the cardholder inputting a password prior to the Transaction processing.

### Authorization only: allows the Merchant to 'Authorize’ the Transaction, which verifies that the Credit Card details are correct and to (where available from a Financial Institution) reserve the funds.

### Authorization/Capture: a 2 stage process that allows the Merchant to 'Authorize’ the Transaction, which verifies that the Credit Card details are correct and to (where available from a Financial Institution) reserve the funds; and then to later ‘Capture’ the Authorized Transaction and receive payment.

### Card Security Code [“CSC”]: allows access to the CSC program, sometimes referred to as “Credit Card Verification number” and can also be referred to as “CVC2”, “CID” and “CVV2”. CSC is a fraud prevention initiative that requires the Merchant’s End User to enter their Credit Card's security code that is only found on the physical card.

#### 2-Party (Merchant Managed Payments) mode requires the Merchant to have the ability to transmit the CSC to the Bank; or

#### 3-Party (Server Managed Payments) mode requires the Merchant to provide the option for the Merchant’s End Users to key enter the CSC.

### Order Transaction / Retrieval: allows the Merchant via the TNSPay Gateway API to request a copy of a Digital Receipt (“DR”) for recent Transactions where the DR was not received.

### Tokenization Payments: allows Credit Card details to be stored by the TNSPay Tokenization service and used for future Transactions where Cardholder authority has been obtained by the Merchant.

### PayPal acceptance: allows PayPal to be added as an Additional Accepted Card Type to the Merchant Profile, enabling:

#### (i)PayPal transaction processing using the TNSPay Gateway API; and

#### (ii) PayPal refund processing using Merchant Administration or the TNSPay Gateway API.

### Risk Management Module: allows the Merchant to configure a variety of risk management rules to apply to all attempted Transactions, unless the Merchant specifically instructed the bypassing of the configured rules. Attempted Transactions are flagged and actioned based on the risk rules that the Merchant has configured.

# **Merchant Administration and Reporting**

# Merchant Administration is an online reporting feature accessed using a browser interface. It includes the following Features:

### Reporting and administration functions for viewing Transactions, printing transaction information, performing Mail Order Telephone Order (“MOTO”) purchases by manually key entering the Credit Card details and performing Refunds.

# **Documentation**

# Documentation provides the Reseller or Merchant with support material that includes information pertaining to installation, integration, enablement and operation of the TNSPay Gateway Service. It includes the Merchant’s End User documentation and example code (where applicable).

# **Limitations**

# Any failure or limitations of Financial Institution systems and capabilities, telecommunications links, internet connections and PSP's and other 3rd party elements may terminate or degrade some or all TNSPay Gateway Features.

## PayPal transactions can only be initiated by the Merchant’s End Users over the internet, where the Merchant’s End User is able to log into the PayPal solution.

## Hosted Payment Form functionality requires the Merchant to use the TNSPay Gateway API Access Method only. For clarity, Hosted Payment Form functionality is not available using Merchant Administration Access Method.

# Verified by Visa functionality requires the Issuing Bank, Acquiring Bank, the Merchant and the Visa End User to be enrolled in the Verified by Visa program. Verified by Visa Authentication will not occur if anyone of these parties is not actively or accurately enrolled in the Verified by Visa program.

# MasterCard SecureCode functionality requires the Issuing Bank, Acquiring Bank, the Merchant and the MasterCard End User to be enrolled in the MasterCard SecureCode program. MasterCard SecureCode Authentication will not occur if anyone of these parties is not actively or accurately enrolled in the MasterCard SecureCode program.

## TNSPay Tokenization functionality requires the Merchant to use the TNSPay Gateway API Access Method only. For clarity, TNSPay Tokenization functionality is not the Merchant Administration Access Method.

# **Requirements**

# Access to the TNSPay Gateway Service requires the Reseller or the Merchant and the Merchant’s End Users to:have an internet connection and supported web-browser (for the Merchant Administration Feature and Merchant Manager Feature for the Reseller access only).

### when using the TNSPay Gateway API:

#### Have the ability to communicate using HTTPS;

### when using the Hosted Payments Pages:

#### Have the ability to communicate using HTTPS.

# Core processing requires:

### The Merchant to have a merchant facility with one of the supported Financial Institutions;

### Where Merchant is accepting American Express, Diners Club, Discover or JCB cards, the Merchant must also have:

#### a merchant facility with one of the Supported Financial Institutions referred to in (a);

#### an agreement with the Supported Financial Institution providing the merchant facility in (i) to process American Express, Diners Club, Discover or JCB card Transactions; and

#### a merchant agreement with American Express, Diners Club, Discover or JCB;

### An individual merchant profile is established on the TNSPay Gateway Service for each bank merchant facility and or currency; and

### An additional merchant profile is established on the TNSPay Gateway Service for every transaction processing facility.

### To access and use additional Features including Multicurrency, Verified by Visa or MasterCard SecureCode, the Merchant must obtain any necessary permission, agreements or other requirements from the Supported Financial Institute providing the merchant facility.

## To access and use the additional Processing Feature of PayPal acceptance, the Merchant must have a valid merchant agreement with PayPal.

# TNSPay Tokenization functionality requires the Merchant to have obtained a standing authority from the Cardholder, authorizing the Merchant to make an initial and subsequent payment transaction on the Cardholders behalf for specified amounts and at agreed time intervals/dates. Reseller understands and agrees that TNS will charge Reseller an additional fee for Tokenization.

# **TNS Processing Obligations**

# TNS will establish a Merchant Service Organization (“MSO Profile”) on the TNSPay Gateway for the Reseller to allow the Reseller to create merchant profiles.

# TNS will provide, where applicable and available for a Feature, one electronic copy of the End User documentation and example code to the Reseller.

# TNS will enable live production/processing upon receiving confirmation that the Reseller has successfully completed the testing requirements.

# **The Reseller’s Responsibilities**

## The Reseller must ensure that any Merchant who uses the Hosted Processing Services and/or Service Packages has a valid Merchant Agreement with the Reseller.

## The Reseller understands that the Support and Maintenance set forth herein shall be available to the Reseller only and that TNS shall have no obligation to any Merchant of Reseller, i.e. TNS shall not accept requests for support from any Merchant. Reseller will be responsible for providing support and maintenance services in connection with the TNSPay Gateway Service. For clarity, it is the Reseller’s responsibility to provide Merchant Support & Maintenance to its Merchants, but the Reseller may sub-contract some of these responsibilities to TNS in a separate agreement for an additional fee.

## Merchant Support & Maintenance services that Reseller is required to provide to Reseller’s Merchants include operational and knowledge based services that draw on the TNSPay Gateway Service, operations and general industry expertise. These typically include the following services provided to Merchants:

## Merchant Profile registration, establishment and enablement support;

## Post live activities for the TNSPay Gateway, also known as Operational Support; and

## General information about the TNSPay Gateway features, processing capability and use, also know as Knowledge Support.

## The Reseller must notify TNS of all Level 1 Fault issues by telephone only.

## The Reseller is responsible for providing a Merchant Help Desk for the purposes of providing Merchant Support & Maintenance Services to the Reseller’s Merchants. The Merchant Help Desk is the first point of contact for the Reseller’s Merchant with a service difficulty, potential Faults or a Merchant Support issue. The Reseller must not represent that TNS has any role in the Merchant Help Desk and any failure of the Merchant Help Desk is Reseller’s sole responsibility.

## The Reseller’s Merchant Help Desk provides a Level 1 (primary contact) service function for Merchant Support & Maintenance Services. These services will include provision of a first point of contact for all users of the TNSPay Gateway.

## The Reseller’s responsibilities in providing this Merchant Help Desk include obligations to:

## supply Merchant Support & Maintenance Services to Merchants with a valid Merchant Agreement;

## communicate the TNSPay Gateway features and capabilities to Merchants;

## provide technical integration support to Merchants;

## ensure Merchants are using the TNSPay Gateway within specified capabilities (defined in the TNSPay Gateway Documentation);

## report Faults to TNS including providing the following advice by email for all Faults to assist TNS with the Fault rectification process;

## a description of events occurring prior to the Fault including, but not limited to any changes to the Reseller or Merchant’s technical environment; and

## communicate any appropriate TNS Fault resolution instructions to relevant parties.

## The Reseller is solely responsible for billing Merchants, including but not limited to collecting and recording any information which the Reseller requires to bill Merchants.

## The Reseller agrees to pay fees for the Hosted Processing Services in accordance with the applicable Fee Schedule regardless of any dispute between the Reseller and the Reseller’s Merchant.

## 8.10 Private labeling and customization of the TNSPay Gateway elements and the Merchant Manager and Merchant Administration Portal Modules for the Reseller’s internal use are permitted in accordance with the Branding Development Kit supplied by TNS.

## The Reseller authorizes TNS to use and reproduce the Reseller’s copyright, trademark and other intellectual property rights supplied to TNS or the Hosted Processing Services by the Reseller.

## The Reseller must advise TNS upon the Reseller’s successful completion of the testing requirements. Failure to provide such advice may delay commencement of live Transaction processing.

# **The Reseller’s Merchant’s Processing Obligations**

# The following information must be provided to TNS prior to the commencement of live processing or the implementation of additional Credit Cards:

### Merchant’s processor merchant and terminal ID/number/s;

### Merchant’s American Express merchant number (if applicable);

### Merchant’s Diners Club merchant number (if applicable); and

### Merchant’s Discover merchant number (if applicable); and

### Merchant’s JCB merchant number (if applicable).

# Each Merchant is responsible for integrating the TNSPay Gateway API into the Merchant’s technical environment and for undertaking any other technical activities required for the Merchant to access and use the TNSPay Gateway Services.

# **Conditions Precedent.** The following are conditions precedent to the operation of this Agreement and must be met to the reasonable satisfaction of TNS before TNS is obliged to supply any goods or services described in this document:

# the Supported Financial Institution must agree to send and receive Transaction messages from TNS to enable Transaction Processing;

# TNS must have completed any technical work required to enable the Supported Financial Institution to send and receive Transaction messages from TNS to enable Transaction Processing; and

# satisfaction of the conditions precedent in Section 11.1 and 11.2 above may require additional work and fees under a separate Order (with attached Statement of Work) agreed between TNS and the Reseller, in which event: the work specified in the Order must be completed.

section three: Reseller SUPPORT and MAINTENANCE SERVICES Availibility

|  |
| --- |
|  |
| **TNS Shall provide the following Support Services** |
| Merchant Registration and Establishment Support to the Reseller |
| Technical Integration Support is available to the Reseller for up to 8 hours of specialist 2nd level integration support via phone or email during business day hours |
| Merchant Enablement Support to the Reseller |
| Operational and Knowledge Support to the Reseller is available for up to 3 hours per month via phone or email during business day hours |
| Designated Account Management :   * Designated Account Manager * Regular meetings with TNS to raise/discuss concerns |
| **TNS Shall Provide the Following Reseller Maintenance Services** |
| Email Notification Alerts - for Scheduled and Unscheduled outages that may impact Reseller’s Service |
|  |
| Level 1 Fault Acceptance 24 hours x 7 Days a week |
| Maintenance Support Escalation Charter – covering procedures for 24 hours x 7 days Level 1 Fault escalation |
| Access to Senior Support Engineer for Level 1 Faults – 24 hours x 7 days |
| Incident Reports for Level 1 Faults |

section Four: reseller Support service Descriptions

# **Overview of Reseller Support Services**

# Reseller Support Services offered under this Agreement are comprised of four (4) main elements each with its own suite of Features:

### Merchant Registration and Establishment Support;

### Technical Integration Support;

### Merchant Enablement Support; and

### Operational and Knowledge Support.

# TNS Support Services described in Section 3 can only be accessed during Business Hours on Business Days.

# **Merchant Registration and Establishment Support**

# TNS shall establish Reseller’s test merchant profile.

# **Technical Integration Support**

# Technical Integration Support assists Reseller to:

### test the payment gateway interface.

### integrate the TNPay Gateway API into Reseller’s system.

# **Merchant Enablement Support**

# After receiving Reseller’s notice that Reseller has completed the testing requirements, TNS will verify that the Reseller’s testing was successful by reviewing Transaction logs. If successful, TNS will establish a production MSO Profile, enable the profile, create Merchant profiles, advise the Reseller of the production profile details and provides instruction on the configuration modifications required to commence live Transactions from the Merchant profiles.

# **Operational and Knowledge Support**

# Operational Support assists the Reseller in undertaking post live activities including:

### re-setting the Merchant Administration administrator password; and

### updating the Reseller’s MSO Profile to accept new Credit Card types.

# Knowledge Support is the provision of information related to Features, processing and use of the Merchant Administration feature including:

### explaining how to perform a Transaction;

### explaining how to perform a Refund;

### explaining how to search for an individual Transaction;

### explaining how to search for a group of Transactions based on a description such as all declined Transactions, all approved Transactions or search by date;

### explaining terminology used in Merchant Administration; and

### explaining how to utilize and configure the Risk Management Module.

# **Designated Account Management**

# The Reseller will be entitled to access to a Designated Account Manager, who will conduct regular meetings at times agreed with the Reseller, thereby providing a forum where the Reseller can more easily raise and discuss any issues relating to the Services.

# **Onsite Technical Integration Support**

# If the Reseller requests and TNS, in its sole discretion agrees, then TNS may provide tne Reseller with on-site Support in relation to the Reseller’s Technical Integration with the TNSPay Gateway Services. In addition to the Fees specified in the Fee Schedule, the Reseller agrees to pay TNS for this on-site Support at TNS’ then current time and material rates and to reimburse TNS for any reasonable travel and living expenses.

# **Additional Support**

# Business related issues such as questions on product suitability; pricing or feature availability are not Support Services. These issues are to be directed to the Reseller’s TNS sales manager.

# **TNS Support Obligations**

# TNS will:

### provide one soft copy of the relevant Support Documentation including user guide(s) and example code to the Reseller; and

### advise the Reseller if Technical Integration Support is necessary for the Reseller’s technical integration requirements and provide a quotation for Technical Integration Support time.

# **The Reseller’s Support Obligations**

# The Reseller will:

### ensure all Documentation is provided to the Reseller’s staff that are involved in the Technical Integration of the TNSPay Gateway API;

### designate an authorized technical contact of appropriate skill, expertise and experience to be responsible for Technical Integration and to receive Technical Integration Support services from TNS;

### ensure that the Reseller’s authorized technical contact has read all provided Documentation prior to commencing Technical Integration;

### ensure that all staff using or operating the TNSPay Gateway Service are of appropriate skill, expertise and experience and are provided with the Documentation;

### ensure that the Reseller uses a recommended and supported interface;

### supply and be responsible for any code, processes or other functions required to integrate the Reseller’s e-commerce application with the TNSPay Gateway Service;

### ensure the appropriate distribution of Documentation to those staff involved in the ongoing operation of the TNSPay Gateway Service and in particular staff using the Merchant Administration function;

### lodge all support or maintenance requests in accordance with the terms and conditions of the defined Support or Maintenance parameters; and

### provide transaction identifier details including the transaction number and amount when requesting additional information on declined response codes.

# **Limitations**

# TNS provides advice and support strictly for the TNSPay Gateway Service. TNS does not have specific expertise or knowledge in the Reseller’s technical infrastructure and as such the TNSPay Gateway Service, including Support does not include advice, modifications, coding or support in relation to the Reseller’s technical environment or applications.

# All queries related to reconciliation of the Reseller’s accounts must be directed to the Reseller’s Financial Institution. TNS does not provide reconciliation advice of any type.

# TNS’ support obligations with respect to Supported Third Party Processing Services are limited to resolving issues and queries with respect to the integration between the TNS Services and the Supported Third Party Processing Services.

# **Requirements**

# The Reseller is required to provide a technical infrastructure. This infrastructure must include TNS supported elements as required to integrate with the TNSPay Gateway Services.

# The Reseller is required to provide TNS with accurate details about the Reseller’s technical environment as required.

section Five: Maintenance

The following Maintenance Levels only apply to Fault related issues. They do not apply to general enquiries, integration, support or issues pertaining to the operational management of the Reseller’s service.

# **Notification – Email Alerts**

# TNS uses e-mail for communications with the Reseller pertaining to maintenance issues. Despite anything else in this Agreement, TNS will notify up to three appropriate e-mail contacts of maintenance issues.

# The Reseller acknowledges that TNS does not verify the Reseller’s receipt of e-mail communications.

# **Fault Reporting and Service Levels**

* 1. **Fault Levels:**
     1. **Level 1 Fault** means a catastrophic Fault resulting in the total loss of all payment processing by Reseller.  It excludes Level 2 and Level 3 Faults as defined herein and any Fault or problem that is not directly related to the processing of Transactions.
     2. **Level 2 Fault** means a serious Fault resulting in the loss of the reporting tool and intermittent loss of payment processing by Reseller.  It excludes Level 1 and Level 3 Faults as defined herein and any Fault or problem that is not directly related to the processing of Transactions.
     3. **Level 3 Fault** means a non-critical Fault that includes cosmetic changes, documentation updates, loss of minor product features and general maintenance.  It excludes Level 1 and Level 2 Faults as defined herein.

# The Reseller agrees to notify TNS of Level 1 Faults via telephone and Level 2 and 3 Faults via e-mail.

# TNS will provide service levels specified in Table 3 for Faults that have been notified in accordance with this Section 24.

## **Table 3 - TNS Fault Response**

|  |  |  |  |
| --- | --- | --- | --- |
| **Activity** | **Level 1 Fault** | **Level 2 Fault** | **Level 3 Fault** |
| Acknowledgment | Within 1 hour of receiving a Fault report from the Reseller | - Within 2 Business Hours of receiving a Fault report from the Reseller | Within 2 Business Days of receiving a Fault report from the Reseller |
| Confirmation | -  Within 2 hours **of receiving a Fault report from the Reseller** | Within 2 Business Hours **of receiving a Fault report from the Reseller** | Within 5 Business Days of issuing an Acknowledgement |
| Target Restoration | Within 6 hours of issuing a Confirmation | Within 6 Business Hours of issuing a Confirmation | - Within 90 Business Days of issuing a Confirmation or in the next product release at TNS’ sole discretion |
| Fault Closure | E-mail advice within 2 Business Days of Restoration | E-mail advice within 5 Business Days of Restoration | At TNS’ discretion |
| Fault Acceptance | 24 hours x 7 days | Business Days | Business Days |

# The response times for Level 2 and Level 3 Faults provided in Table 3 are only available during a Business Day. Any Level 2 or Level 3 Fault notified to TNS after 1500 hours on a Business Day will be deemed to have been notified at 0900 hours of the next Business Day.

# The Reseller acknowledge that achievement of the service levels may require timely assistance, including actions, access to premises and/or information, from the Reseller and agrees TNS is not liable for failure to meet service levels where the Reseller does not provide the required assistance in a timeframe specified by TNS.

# **Third Party Outages**

# If a third party notifies TNS of an unplanned outage that will cause a loss of transaction processing or report generation, TNS will notify the Reseller via e-mail within two hours of receipt of notification from the third party and, if appropriate, implement an alternative service to enable transaction processing during the outage

# If a third party does not notify TNS of an unplanned outage TNS will use commercially reasonable efforts to notify the Reseller upon becoming aware of the outage and if appropriate implement an alternative service to enable transaction processing during the outage.

# If a third party notifies TNS of a planned outage, TNS will notify the Reseller via e-mail within one Business Day of receipt of notification and, if appropriate, implement an alternative service to enable transaction processing during the outage.

# **Scheduled Outages**

# The Reseller acknowledges and accepts that TNS has regular Scheduled Outages of up to four hours for the maintenance of the TNSPay Gateway Services.

# Where possible TNS will make commercially reasonable efforts to provide 5 Business Days notice for each Scheduled Outage and to provide an alternative method for transaction processing to the Reseller during the Scheduled Outage.

# The Reseller agrees that Scheduled Outage times are not negotiable.

# Planned outages are optional and will only occur as required.

# **Unscheduled Outages**

# Unscheduled Outages for reasons of suspension of access to the TNSPay Gateway Services or Force Majeure Events are subject to Paragraph 13.5 of the Specific Terms and Conditions.

# Unscheduled Outages that are not subject to Paragraph 13.5 of the Specific Terms and Conditions are Faults and will be managed through the processes defined in this Schedule.

# **Maintenance Support Escalation Charter**

# Where included in the Reseller’s Support and Maintenance Plan, TNS will create and distribute to the Reseller a customized Support Escalation Procedure document that outlines the following key areas:

### Confirmation of Level 1, Level 2 & Level 3 Fault descriptions and Service levels;

### Roles and Responsibilities – including contact points for both TNS and the Reseller; and

### Both parties will act in accordance with this document.

# **Access to Senior Support Engineer for Level 1 Faults**

# Where included in the Reseller’s Support and Maintenance Plan, and if so requested by the Reseller, the Reseller will have access by telephone to one of TNS’ Senior Support Engineers 24 hours x 7 days for a Level 1 Fault that affects the Reseller’s use of the Services.

# **Emailed Incident Reports for Level 1 Faults**

# TNS will create and distribute within 5 Business days an Incident Report to the Reseller’s nominated email contact point following TNS’ closure of its incident process for a Level 1 Fault of which TNS is aware.

# The Incident Report will address the following key areas:

### Problem manifestation;

### Log of events;

### The Reseller Impact and resolution;

### Root cause (if known) and where applicable preventive measures; and

### Any Required Actions from TNS or the Reseller, if applicable.

# **Modifications and the Reseller’s Infrastructure**

# The service levels in this Schedule do not apply to the Reseller’s requested modifications to the TNSPay Gateway Service.

# TNS service levels do not apply to any fault, outage or lack of transaction processing service due in whole or in part to:

### faults, failures or other issues within the Reseller’s infrastructure and equipment;

### a failure of a Financial Institution to provide services or information of any kind to the Reseller.

# **Onsite Maintenance Service**

# If the Reseller requests and TNS, in its sole discretion agrees, then TNS may provide the Reseller with on-site Maintenance Services in relation to the Reseller’s use of the TNSPay Gateway Service. In addition to the Fees specified in the Fee Schedule, the Reseller agrees to pay TNS for this on-site Maintenance at TNS’ then current time and material rates and to reimburse TNS for any reasonable travel and living expenses.

Section six: Service level Agreement

# **Service Level Availability (“SLA”) and Failure to Deliver SLA**

# TNS will maintain a service level target of 99.9% availability, measured by the amount of time each calendar month that the Transaction Processing Services are available for use by Customer in accordance with this Service Schedule.

Monthly Availabilty of                  Total Minutes per month – Total minutes for

TNSPay Gateway Service               =                          Level 1 Faults in month \* 100

# Total Minutes per month

# In the event TNS fails to maintain the service level target of 99.9% as defined herein in a given month, Customer may request a service credit in the amount of a percentage of the total fees paid to TNS in such month for transaction processing. The applicable percentage will be determined based on the following table:

|  |  |
| --- | --- |
| **Availability due to Level 1 Faults** | **Percentage of the Total Fees Paid to TNS in such Month for the Affected Service\*** |
| **Greater than 99.9%** | **0%** |
| Less than  99.9% and greater than or equal to 98.0% | 5% |
| Less than 98.0% and greater than or equal to 97.0% | 15% |
| Less than 97.0% | 25% |

# \*In no event shall Customer’s total service credit in any month exceed 25% of the Total Fees Paid for the Affected Service in such month.

# For purposes of this SLA, service credit shall not be available to the extent that such failure to meet the Availability as defined in Section Six is as a result of or due to (1) Scheduled Maintenance, (2) force majeure events, (3) outages, failures or interruptions caused by work, equipment, facilities or services not provided directly by or maintained by TNS including, but not limited to, third party outages, Customer’s applications, equipment and facilities or (4) any suspension of access to Services by TNS in accordance with this Agreement or (5) the acts, negligence or willful misconduct by Customer, Customer’s End Users or the employees, agents, contractors or service providers of Customer or its End Users.

# Customer understands and agrees that the Service Credits set forth herein shall be Customer’s sole remedy and the sole liability of TNS with respect to any failure by TNS to meet the performance standards set forth under this SLA.  In addition, Customer understands and agrees that the terms and conditions set forth in this SLA apply only to the TNSPay Gateway Services described in this SLA.

# If TNS fails to meet the Availability standard of this SLA due to Level 1 Faults in any given month, then service credits are available to Customer; provided, however, Customer must provide to TNS a written request describing the details of the service impairment within thirty (30) days from the invoice date which reflects the period of time for which credits are requested.  Claims under this SLA submitted after the aforementioned time period will not be accepted by TNS.  TNS will verify each claim for SLA credit within 30 days from the receipt of each fully completed claim, and accept and reject such claims at its sole discretion, which shall be based on both information provided by Customer as well as that of TNS.  If TNS requires additional information in order to verify a claim, it may request such information from Customer within the 30-day period of Customer’s initial submission of the claim.  If Customer fails to resubmit the claim within fifteen days of TNS’ requesting such additional information, TNS may reject the claim.  For the avoidance of doubt, TNS only will apply credits against amounts it is owed by Customer in an amount equal to the percent in the performance standards set forth herein.   Credits for service failures verified by TNS will be applied to the next invoice sent to Customer after completion of verification. In no event may the total credits in any month for a service exceed 25% of the Total Fees paid for the affectedService in the applicable month.  Any disputes shall be resolved as set forth in clause 13.1 of this Agreement.

# In the event TNS fails to satisfy the availability standard set forth in this SLA for three (3) consecutive months (“Chronic Issue”), Customer may terminate this Agreement without penalty for such early termination upon written notice to TNS.  Any such termination notice must be delivered in writing by Customer to TNS within thirty (30) days of the third month in which TNS failed to meet the availability standard described above.  Upon termination, Customer shall have no further financial obligations to TNS with respect to any unsatisfied minimum commitments set forth in this Agreement.

**SCHEDULE 3**

**Statement of Work #1 for Initial Development Project:   
Integration with MAC One-Time Phone (OTP) Authentication**

### Project Description

Mobile Authentication Corporation (“MAC” or “Reseller”) provides an out-of-band, one-time password solution used to authenticate financial transactions. MAC seeks to expand their business to include payment gateway capabilities through a partnership with TNS.

The Initial Development Project set forth in this Schedule 3 of the Agreement requires TNS to integrate the TNSPay Gateway Hosted Payment Page interface into the MAC OTP service. This involves the TNSPay Gateway integrating with the MAC API to call the OTP service for two-factor authentication of payers using a mobile phone.

MAC intends to leverage the TNSPay Gateway together with the MAC OTP service to enable merchants who require two-factor authentication of the cardholder for payments.

### Project Fees

TNS will invoice MAC the fees set forth in Schedule 1 herein in connection with this Initial Development Project. Specifically, Reseller shall pay TNS $20,000 upon execution of this Agreement. TNS will invoice Reseller in the amount of $15,000 once the development of the interface with MAC’s OTP system is complete and made available by TNS to Reseller to transmit one-time phone authentication requests in the TNSPay Gateway User Acceptance Testing (UAT) environment pursuant to the SOW #1.

### Scope of Work

For this Initial Development Project, MAC is contracting TNS to develop and integrate the following features/functions into the TNSPay Gateway:

* Hosted Payment Page (HPP) will provide for OTP authentication to occur prior to processing a credit or debit transaction via the TNSPay Gateway.
* TNS will manage, style/theme and control the User Interface (UI) required to prompt and collect the OTP.
* TNS will integrate to the MAC OTP API to provide the authentication.

### Out of Scope

By agreeing to the scope of this Initial Development Project, MAC understands and agrees that the following items are specifically excluded from the scope of this Project:

* Integration of the MAC OTP service via TNSPay DirectAPI, Hosted Payment Form, Merchant Administration, or other TNSPay Gateway integration methods as may be offered from time to time

### Project Documentation

Both parties understand and agree that TNS will produce no custom documentation for MAC in connection with the Initial Development Project.

### Assumptions

In undertaking the work detailed in this Schedule 3, TNS assumes and relies upon the following statements:

1. OTP authentication is performed before payment processing.
2. Merchants may not request to bypass OTP services on a per transaction basis.
3. Certification of the integration to MAC is a simple process, which can be completed in one to two (1-2) business days.

### MAC’s Responsibilities

MAC will be responsible for providing TNS with the following:

1. Access to a production & test system where TNS can send authentication requests for development, testing, and certification. This platform is available to TNS 24x7.
2. MAC will provide TNS with a set of test scripts required for certification to validate the integration is functioning correctly and meets MAC’s requirements.
3. Access to a MAC resource to assist TNS with any development, testing or certification questions that arise during the Initial Development Project. This resource must be available to respond to requests from TNS within one (1) business day and ensure timely responses to TNS questions.