



## Terms & Conditions



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*CMT is an Authorized PSP/MTS Provider*

# Terms & Conditions

## 1. DEFINITIONS.

Whenever used herein, or in any attachment thereto, the following capitalized terms shall have the meaning set forth below:

**"Administrative Fee"** shall mean that fee charged to Customer associated to offset handling, restocking, and administrative costs associated with claims made to CMT's insurance carrier, as provided on the Order Form.

**"Agreement"** means, collectively, the Order Form, including any attachment thereto, and these Terms & Conditions. All documents shall be considered as constituting the complete agreement of the Parties, whether provided separately or collectively.

**"CMT"** shall mean CREATIVE MOBILE TECHNOLOGIES, LLC.

**"CMT Authorized Service Center"** shall mean a taxicab service center, fleet garage, or other similar facility designated by CMT as qualified to perform Installation Services, Maintenance Services, Updates, and such other subset of Services as designated by CMT.

**"CMT System"** shall mean the Hardware, Software, Network, and other portions of the system installed in taxicabs by CMT or at its direction or otherwise used to deliver Services for the benefit of Customer, drivers, their agents, or passengers.

**"Credit and Debit Card Services"** shall mean the portion of the Services used to process electronic passenger credit, debit, or prepaid card transactions via the CMT System.

**"Customer"** shall mean the party signing the Order Form, or the taxicab medallion owner on whose behalf the Order Form is signed pursuant to a valid Power of Attorney. Customer shall not include passengers.

**"Customer Representatives"** means any agents, drivers, Customer employees, employers, affiliates, and their respective employees, agents, officers, contractors, vendors, or other business invitees authorized by the Customer, at any time and from time to time, to use or access a CMT System.

**"DCTC"** shall mean the District of Columbia Taxicab Commission, its affiliates, representatives, employees, commissioners, and authorized agents.

**"De-Installation Fee"** shall have the meaning set forth in Section 10.3.

**"Early Termination Fee"** shall have the meaning set forth in Section 10.2.

**"Effective Date"** shall mean the date the Order Form is signed by Customer and accepted by CMT, whichever is later.

**"Full Replacement Cost"** shall mean the complete cost to replace each component of the CMT System up to a total cost of \$2,605.00 for the entire CMT System. For clarity, but without limitation, the Full Replacement Cost does not include any Purchase Price, Early Termination Fee, De-Installation Fee or Equipment Re-Inspection Fee (as each such term is defined below).

**"Hardware"** shall mean equipment or machinery, together with all associated components, media, firmware and other embedded software, and instructions, which are provided, operated and/or maintained by or for CMT at any time pursuant to this Agreement.

**"Installation Services"** means those Services associated with the installation or re-installation of a CMT System in a taxicab and provision of assistance and advice regarding the preparation of a taxicab, the staging and preparation of CMT Systems for installation or re-installation, the installation or re-installation and testing of CMT Systems, the de-installation and packaging for shipment of replacement equipment for a CMT System, training of Customer, end users and technical support staff.

**"Intellectual Property"** of any Person shall mean any (a) processes, methodologies, procedures, (b) software, tools and machine-readable texts and files, (c) literary works or other works of authorship, including documentation, reports, drawings, charts, graphics, and other written documentation, and (d) products, ideas, procedures, concepts or materials in which such Person possesses Intellectual Property Rights.

**"Intellectual Property Rights"** of any Person shall mean any and all intellectual property rights of such Person, whether registered or unregistered, anywhere in the world, including each of the following throughout the world: (a) registered and unregistered copyrights and all derivative works thereof; (b) pending and issued patents (including all reissues, reexaminations, divisionals, continuations, and continuations-in-part); (c) mask works and trade secrets as defined by applicable Law; (d) trademarks and service marks, and (e) all other intellectual property rights enforceable under the Laws of the United States, the State of New York or any other jurisdiction where Services are used or from which Services are provided.

**"Laws"** means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, statutory rules, principles of law, published policies and guidelines, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards and the terms and conditions of any grant of approval, permission, authority or permit of any governmental authority or statutory body.

**"Losses"** shall mean any and all damages, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments), Taxes and expenses (including interest, court costs, reasonable fees and expenses of attorneys, accountants, and other experts or other reasonable fees and expenses of litigation or other proceedings or of any claim, default, or assessment).

**"Maintenance Services"** shall mean those Services provided by CMT in connection with the CMT System. Maintenance Services include preventive and remedial maintenance on Hardware and the implementation of Updates to Software and Hardware.

**"Modern Taximeter System" or "MTS"** shall mean the approved combination of the CMT System and an approved taximeter such that all DCTC regulations are met with regard to data collection and in-vehicle functionality, as such regulations are amended from time-to-time.

**"Monthly Recurring Charges"** shall be those monthly charges due by Customer as set forth in the Order Form.

**"Network"** means the wired and wireless communication facilities and equipment (including routers, wireless gateways, antennas, receivers, payment gateways, and interface cards), designed, operated, and integrated by or with the permission of CMT in order to (a) interconnect the components of the CMT System, (b) allow Customer, passengers, and drivers to access and use the CMT System, (c) enable Customer to use the Services, and (d) enable CMT to provide the Services and operate, maintain, and manage the CMT System, all in accordance with the Agreement.

**"Order Form" or "Order"** means any order issued by Customer or at its direction, at any time and from time to time, for the procurement of the CMT Systems, Hardware, and Services which shall be deemed made

upon the Effective Date of the Agreement by the completion of an Order Form.

**"Parties"** shall mean CMT and Customer, collectively.

**"Party"** shall mean either CMT or Customer.

**"Payment Service Provider" or "PSP"** shall mean an entity duly authorized by DCTC to collect any and all surcharge amounts, process electronic payments, and provide required reporting and data to DCTC, as such requirements are amended from time-to-time.

**"Person"** shall mean any person or entity.

**"Services"** means (a) the services, functions, and responsibilities of CMT described in the Agreement, and (b) any services, functions, or responsibilities provided by CMT or a CMT Authorized Service Center for the benefit of Customer, drivers, or passengers not specifically described in the Agreement, but which are required for the proper performance and delivery of the Services specifically described in the Agreement. Services include providing Hardware, Software, Networks, and other components of the CMT System in accordance with the Agreement. Where applicable, the term Services shall include Credit and Debit Card Services.

**"Software"** shall mean the object code versions of any applications programs, operating system software, computer software languages, utilities, other computer programs, and related documentation, in whatever form or media, including the tangible media upon which such applications, programs, operating system software, computer software languages, utilities, other computer programs, and documentation are recorded or printed, together with all corrections, updates, and releases thereof, which are at any time provided or made available by CMT to Customer.

**"Special Default Event"** shall mean the occurrence of any of the following: (i) Customer files a bankruptcy petition of any type or has a bankruptcy petition of any type filed against it, makes an assignment for the benefit of creditors, or goes into liquidation or receivership, (ii) Customer ceases to conduct business in the normal course, becomes insolvent, enters into suspension of payments, moratorium, reorganization or bankruptcy, makes a general assignment for the benefit of creditors, admits in writing its inability to pay debts as they mature, suffers or permits the appointment of a receiver for its business or assets, or avails itself or becomes subject to any other judicial or administrative proceeding that relates to insolvency or protection of creditors' rights, (iii) any routing of in-vehicle credit card transactions to a non-CMT-approved payment processor or application, unauthorized removal of or tampering with the installed CMT System, or routing of transactions through non-CMT hardware, or any failure by Customer or any Customer Representative to process any credit card transaction through CMT, (iv) non-payment of amounts due for a period of sixty (60) or more days, or (v) the direct or indirect ownership or control of Customer that exists as of the Effective Date changes in any material manner that may adversely affect the rights of CMT, including the acquisition of ownership or control by a competitor of CMT.

**"System Component"** means an item of Hardware or Software that forms part of a CMT System.

**"Term"** shall have the meaning set forth in the Order Form and in Section 9.1.

**"Updates"** shall mean all revisions, updates, modifications, corrections, releases, versions, fixes and enhancements to Software or Hardware.

## 2. CMT SYSTEM.

**2.1 Installation Support.** CMT will provide the CMT System and supervision and support of in-vehicle Hardware installation in accordance with the terms and subject to the conditions set forth in this Agreement.

**2.2 Risk of Loss.** In the event of loss or damage to the CMT System, or any component parts thereof, which is not covered by insurance, Customer will be responsible for up to the Full Replacement Cost.

**2.3 Ownership of CMT System.** The CMT System is at all times and shall remain the property of CMT.

**2.4 Orders.** For new equipment, Customer acknowledges that CMT, upon the execution of the Order Form by the Customer and its acceptance by CMT, shall rely upon such Order Form and shall place, as and when appropriate based on scheduled installation(s), an order with its respective manufacturers for the System Components that are the subject of the Order Form and shall secure such Order with a substantial down payment determined by CMT.

### 3. INSTALLATION.

**3.1 CMT's Responsibilities.** During the Term, CMT shall (i) provide supervision of Installation Services for all CMT Systems ordered by Customer in accordance with this Agreement, and (ii) at the applicable CMT Authorized Service Center (or such other location agreed upon in writing by the Parties), use commercially reasonable efforts to supervise the installation of the CMT System in the taxicab(s). Except for the taxicab itself, CMT shall be solely responsible for obtaining and providing all Hardware, Software, wiring, and any other material necessary to install and operate the CMT System in the taxicabs, exclusive of the taximeter and the partition (if applicable). Customer acknowledges that the performance by CMT of any obligation hereunder is and shall remain throughout the Term conditional upon the full satisfaction by Customer of its obligations hereunder.

**3.1.1 No Taximeter. TO BE CLEAR AND NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, THE CMT SYSTEM DOES NOT INCLUDE A TAXIMETER. CUSTOMER HEREBY ACKNOWLEDGES THAT IT SHALL BE REQUIRED TO SUPPLY A "SMART" TAXIMETER, WHICH SHALL BE APPROVED IN ADVANCE BY CMT, FOR EACH VEHICLE PRIOR TO OR IN CONJUNCTION WITH THE INSTALLATION OF CMT HARDWARE.** Failure of Customer to supply the appropriate and approved meters shall delay installation of CMT Hardware, which delay shall not give rise to any claim as against CMT hereunder.

**3.2 Customer's Responsibilities.** Customer shall reasonably cooperate and assist CMT in support of CMT's performance of its obligations under this Agreement, including those set forth in the preceding Section 3.1; such reasonable cooperation and assistance shall include arranging for the applicable taxicab to be made available to CMT or a CMT Authorized Service Center on the installation date and at the time scheduled by CMT. Customer shall be responsible for the proper operation and use of each CMT System (including the Software, Hardware, and Networks) as contemplated by this Agreement. Customer shall pay such fees as may be determined and charged by CMT from time to time in connection with Installation Services or other services provided by CMT in connection with this Agreement.

**3.3 Authorizations.** Unless agreed otherwise, CMT shall be responsible for applying for, obtaining, and, at no additional cost, keeping effective all applicable registrations, licenses, permits, and certifications that may be required (a) to display advertisements and other content via the CMT System.

**3.4 Regulatory Compliance.** Subject to Sections 3.2, 3.3, and 8.1, each Party shall be at all times responsible for compliance with applicable regulatory requirements governing taxicab operations, including, but not limited to, those relating to acceptance of credit cards and payment of drivers, provided that any change in the status of any permit or authorization granted by the DCTC shall not constitute a default by CMT under the present paragraph.

**3.4.1 DCTC Authorization.** CMT represents and warrants that it is an Authorized PSP/MTS Vendor, pursuant to the rules set forth by the DCTC. The Agreement shall at all times be subject to the ongoing authorization of CMT by DCTC to provide PSP services and MTS equipment.

### 4. SERVICES.

**4.1 Provision.** During the Term and subject to the satisfaction by Customer of its obligations under the Agreement, CMT shall provide the Services in accordance with this Agreement.

**4.2 Third-Party Warranty Services.** From the delivery date for a new CMT System until the expiration of the applicable warranty period for the CMT System components associated with such CMT System, CMT or its agent(s) shall, at its own expense, repair or replace (at the option of CMT) any defective or malfunctioning system components in accordance with the third party hardware manufacturer's or third party software licensor's standard warranties then in effect, in each case only to the extent then covered by such warranties, which CMT shall obtain and pass through to any Person designated in writing by Customer.

#### 4.3 Maintenance & Support Services.

**4.3.1 Provision.** During the Term and subject to the satisfaction by Customer of its obligations under the Agreement, CMT shall provide Maintenance Services for each CMT System ordered, installed, and accepted in accordance with this Agreement.

**4.3.2 System Instructions.** Customer shall at all times (a) follow all written operation and user instructions provided by CMT or at its direction to Customer in connection with the CMT System, and (b) provide CMT with reasonable access to the taxicabs to allow CMT to provide all Maintenance Services.

**4.3.3 Out-of-Scope Maintenance.** If any problem, error, or malfunction of a CMT System or System Component(s) is caused by, or, in the reasonable evaluation of CMT, is exacerbated by, the failure of the Customer to comply with this Agreement or as a result of any delay to signal such problem, error, or malfunction in writing to CMT as soon as practicable, CMT may correct such problem, error, or malfunction (collectively, "**Out-of-Scope Maintenance**") but shall be entitled, in its sole discretion, to charge Customer for such Out-of-Scope Maintenance in an amount not to exceed the standard Time & Material Rate (\$95.00 per hour). Notwithstanding anything herein to the contrary, Out-of-Scope Maintenance shall also include any work performed by CMT to correct or repair errors, malfunctions, or other problems with the CMT System or other System Components to the extent such errors, malfunctions or other problems are proximately caused by: (a) any alteration of the affected taxicab by Customer where such alteration to the taxicab (i) is made without CMT's prior written consent and (ii) is not required by applicable Law; (b) vandalism of, or deliberate and unauthorized modifications or repairs to, the CMT System or other system component by Customer, a passenger, or any other Person other than CMT; or (c) accidental damage to the CMT System where such accidental damage is not due to CMT's fault or negligence. For all damage claims made to CMT's insurance carrier, an Administrative Fee of up to \$350.00 may be charged to Customer, which fee may be modified or waived in CMT's discretion.

**4.4 Appointment.** In exchange for the promises contained herein, Customer hereby appoints and designates CMT (or its agent) as the exclusive provider and reseller of interior advertising (including digital advertising), and all rights associated therewith, in all vehicles installed with the CMT System for the Term of this Agreement.

**4.5 Device Support & Hardware Sponsorship.** Customer shall have no entitlement to any share of revenue received by CMT as device support or hardware sponsorship. Unless agreed otherwise, CMT shall have

no entitlement to any share of revenue received by Customer for exterior advertising (e.g., tops).

**4.6 Mobile Applications Integration & Support.** CMT and Customer hereby agree that only mobile applications ("**Apps**") approved by CMT or required by DCTC may be used in connection with Customer vehicle(s) and related services. Customer hereby irrevocably (i) grants to CMT the exclusive right to make decisions on behalf of Customer, at any time and from time to time, in connection with the Apps, and (ii) agrees that such decisions of CMT shall be binding upon Customer and Customer vehicle(s) throughout the Term. Customer agrees to do, and to cause its Customer Representatives, including drivers, to do, all things necessary or useful to give effect to any decision of CMT regarding an App where such collaboration is requested or otherwise necessary to give effect to a decision of CMT in connection with such matter. CMT shall not be responsible for, and shall be under no obligation to provide any integration or support to, Apps which it or DCTC has not approved in accordance with this Agreement, unless specifically required to do so by DCTC (provided, in the latter case, such requirement is not the object of a *bona fide* appeal or contestation by CMT).

**4.7 Integration Support Fees.** To the extent Customer utilizes unsupported Apps or Apps which do not use CMT Processing Services for fares conducted in Customer vehicle, a fee of \$0.35 per transaction ("**Integration Support Fee**") shall be applied and Customer shall remit same to CMT, to offset the reduced transaction volume via the CMT System. A fee to offset lost transaction volume routed through Apps and to offset costs associated with reporting and reconciling trip data ("**Digital Payments Fee**") of \$0.65 per transaction will also apply.

### 5. CARD TRANSACTION PROCESSING.

**5.1 Credit and Debit Card Services.** CMT shall provide, via any acquirer/processor which it selects at any time and from time to time (currently Bank of America Merchant Services), the Credit and Debit Card Services in accordance with this Agreement. Customer hereby appoints CMT as its exclusive PSP and provider of all credit and debit card processing for fares generated in Customer's vehicle(s) whether or not payment occurs in the vehicle throughout the Term, including, but not limited to, all payments made via mobile application or similar associated with fares generated in Customer's vehicle(s). CMT, as the merchant account holder ultimately responsible for the credit card processing fees and clearing for drivers, hereby engages Customer to assist CMT, and Customer accepts the responsibility for providing such assistance, in the reconciliation of such credit card processing and in the management of the chargeback process.

**5.3 Net Payment.** The Parties hereby agree that CMT will remit only the net proceeds associated with the Credit and Debit Card Services and retain all other Fees and any DCTC surcharge in accordance with the terms set forth herein.

**5.4 Liquidated Damages.** Installation of systems or devices used for card or electronic payment processing, unauthorized removal of or tampering with installed CMT Hardware, or routing of electronic transactions to a non-approved processor without express permission of CMT shall require Customer to pay an immediate one-time fee equal to the Full Replacement Cost for the CMT Hardware plus \$25.00 per month for the number of months remaining in the Term for each car in violation of this Agreement ("**Liquidated Damages**"). Customer recognizes that the occurrence of any of the above-referenced activities will have a material adverse impact on CMT and that the loss or damage resulting from such activities is not susceptible of precise determination. The above sums, in view of the difficulty of accurately ascertaining the loss or damage which CMT will suffer by reason of the foregoing activities, are hereby fixed and agreed as the Liquidated Damages that CMT will

suffer by reason of the foregoing activities, and not as a penalty. Liquidated Damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of CMT's rights to indemnification, or Customer's obligation to indemnify CMT, or to any other right or remedy provided for in this Agreement or by law or at equity.

**5.5 Processing Fees.** In exchange for the Credit and Debit Card Services, and inclusive of all fees charged by third-party processors (e.g., interchange fees), Customer agrees to pay CMT per transaction processing fees as set forth in the Order Form for all transactions processed via CMT Credit and Debit Services.

**5.6 Merchant of Record.** As PSP, CMT shall be the sole merchant of record. In connection therewith, CMT shall timely execute, and comply with the provisions of an applicable credit merchant agreement(s) which shall reflect all applicable processing fees therein as well as CMT's responsibility therefor. CMT, as the merchant account holder ultimately responsible for the credit card processing fees and clearing for drivers, hereby engages Customer to assist CMT, and Customer accepts the responsibility for providing such assistance, in the reconciliation of such credit card processing and in the management of the chargeback process.

## 6. ORIENTATION.

**6.1 Customer Orientation.** CMT shall provide Customer with orientation on the proper operation and use of the CMT System, and Customer shall make itself available for such orientation. Customer shall be responsible for providing substantially similar orientation and training to its respective drivers. The Customer orientation for the CMT System should be sufficient to enable Customer and drivers to use and operate such CMT System and to instruct passengers on the proper use of the system and the portion of the CMT System used to provide Credit and Debit Card Services.

**6.2 Orientation Materials.** Customer may request orientation materials from CMT on an as-needed basis in order to fulfill its obligations under Section 6.1. CMT shall only be required to supply same to the extent then available to it.

## 7. FEES.

**7.1 Amounts Due.** Customer shall be responsible for remitting all fees, charges and payments due under the Agreement, which shall include, but are not limited to, all Monthly Recurring Charges and all fees indicated on or referred to in the Order Form or elsewhere in the Agreement ("**Fees**") to CMT in accordance with the terms set forth in this Agreement and in any invoice. For clarity, the Parties acknowledge that each payment herein described is in addition to, and not inclusive of, any other payment herein described.

**7.1.1 Monthly Recurring Charges.** The Monthly Recurring Charges shall be **\$35.00 per vehicle per month**. To the extent CMT offers any credits in writing as against the Monthly Recurring Fees, such credits shall be conditioned upon Customer abiding by all other terms of this Agreement for the duration of the Term, including remaining current on its financial obligations hereunder and complying with all DCTC regulations.

**7.1.2 PSP Fee.** In exchange for serving as Customer's PSP, Customer agrees to pay CMT a fee equal to **ten cents (\$0.10)** for each and every transaction occurring in the Customer's vehicles, over and above that which shall be required to be collected as a surcharge and remitted to the District of Columbia per local regulations ("**PSP Fee**"). For any Customer vehicle who fails to achieve a monthly average of at least ten (10) total transactions per day (cash and credit), a fee of \$29.99 to cover the cost of maintaining a wireless data plan may be applied, in its discretion, by CMT ("**Inactivity Fee**").

**7.1.3 PSP Enforcement.** Customer acknowledges that CMT, pursuant to the regulations mandated by DCTC, is obligated to collect a surcharge on every trip conducted ("**Surcharge**") and that such Surcharge amounts shall be withheld from credit card receipts initially. To the extent such Surcharge receipts are insufficient to cover the complete Surcharge obligation to the District, Customer shall immediately remit any shortfall to CMT. Pursuant to DCTC regulations, CMT shall be compelled to deny access to Customer's taximeter for failure to remit full Surcharge amounts. In CMT's reasonable discretion, it may require a deposit sufficient to cover the monthly Surcharge, which deposit will be used to pay any Surcharge amounts not covered by electronic card transaction receipts and which deposit shall be required to be replenished on a monthly basis to its original level.

**7.1.4 Advertising Revenue Share Credit.** In exchange for Customer's continued good faith compliance with the terms of this Agreement, and subject to continued viability and allowance of the advertising model by existing regulations, CMT will, in its sole discretion, credit an amount equal to thirty percent (30%) of Net Advertising Revenue (as defined below), if any, as against the Monthly Recurring Charges ("**Advertising Revenue Share Credit**"). CMT may withhold this credit if it learns of violations impacting Customer's good faith compliance with the terms of this Agreement or should regulations or requirements dictate modifications to this credit. The Advertising Revenue Share Credit is calculated pursuant to the following formula and Priority Payment Schedule (PPS) (as defined below):

**Advertising Revenue ("AR") LESS Commissions = Net Advertising Revenue ("NAR")**

"**Advertising Revenue**" (or "**AR**") is defined as the sum total of all revenue received by CMT in exchange for the display of advertising via the CMT System. "**Commissions**" are defined as the costs, expenses, charges, fees and commissions associated with delivering and selling, directly and indirectly, the advertising to the CMT System (including without limitation any mandated or otherwise required license fee(s), wireless data plan fees, or revenue share with drivers), together with all applicable taxes thereon. "**Net Advertising Revenue**" is defined as the difference produced by the subtraction of Commissions from AR, provided the result of this calculation is a positive number. Customer acknowledges that CMT does not guarantee the availability of Net Advertising Revenue in any given month. Payments, if any, due relating to the advertising revenue share in any calendar month shall be made by CMT to Customer on a quarterly basis and pursuant to the following "**Priority Payment Schedule**" (or "**PPS**"):

First, CMT shall receive an amount equal to the "**Priority Payment Amount**" (or "**PPA**"), which shall correspond to the amortized cost of the CMT System and related support services (for the purposes of amortizing the cost of the hardware and support services across the Term of the Agreement, an annual rate of 6.5% (0.065) shall be applied); thereafter, CMT and Customer shall share all NAR on an 70% (CMT)/30% (Customer) basis.

**7.2 Authorization.** Customer hereby authorizes CMT to withhold and deduct from any amounts due Customer any Fees or other amounts which are or become due and payable to CMT, including, but not limited to, the Early Termination Fee (as defined below) and the De-Installation Fee (as defined below).

**7.3 Non-Payment.** In the event of non-payment of any amount due by Customer hereunder (the "**Unpaid Amount**"), Customer irrevocably authorizes CMT to withhold the provision of any and all Services and to deny Customer access to the CMT System, including the access of drivers to the CMT System. CMT shall not be responsible for or indemnify Customer for Losses related to or arising as a result of same, including any any lost shift time or regulatory fine, assessment, or similar penalty associated with such consequences for non-payment.

**7.4 Additional Fees.** Customer acknowledges and authorizes CMT to charge additional fees or modify existing fees and/or credits, as necessary, based on changes in DCTC rules and regulations, including, but not limited to driver healthcare funds, advertising permits, etc.

**7.5 Interest Rate.** In the event any sums owing to CMT under the Agreement are not paid when due and payable (or, where no delay for such payment is expressly provided in this Agreement, within ten (10) days of such sums being requested by CMT), interest shall accrue on such sums at the rate of one and one-half percent (1.5%) per month, or other such lower rate as CMT, in its discretion, determines.

**7.6 Right of Off-Set.** CMT will have the right to deduct or offset, to the extent not paid by Customer when due, the Unpaid Amount (together with all unpaid interest thereon) from or against amounts payable by CMT to Customer under the Agreement or otherwise. This remedy shall be in addition to, and not in replacement of, any other remedy available contractually or at law.

## 8. TAXES.

**8.1 Customer Responsibility.** At all times, Customer shall be responsible for all applicable taxes levied by any taxing authority for all amounts related to transactions which may occur via the CMT System (collectively, "**Taxes**"). To be clear, to the extent any transaction occurring via the CMT System is taxable (e.g., as income), Customer and Customer alone shall be solely responsible for all such Taxes.

**8.2 No Withholding.** Unless otherwise agreed or required by law, CMT shall be under no obligation to and shall not withhold any amount related to Taxes from amounts due Customer.

**8.3 Reporting.** In accordance with all applicable Laws relating to Taxes, CMT may be required and, where required, shall file all appropriate disclosures with the applicable taxing authorities with regard to the Services provided hereunder, including IRS 1099-K and state and local equivalents. Customer hereby indemnifies and holds CMT harmless from any and all Losses related, directly or indirectly, to any filings made to governmental taxing authorities regarding the Services provided hereunder or the consequences associated with any such filing.

## 9. TERM.

**9.1 Term Period.** This Agreement shall commence as of the Effective Date and shall expire at the end of eighty-four (84) months following the Effective Date, unless earlier terminated in accordance with the provisions contained herein (the "**Term**"). The Term shall automatically be renewed for additional term(s) of five (5) years thereafter (each a Term), unless written notice of termination is delivered by either Party to the other not less than one hundred twenty (120) days prior to then-current Term expiration.

## 10. TERMINATION.

### 10.1 Termination For Cause.

A. If either Party defaults in the performance of any of its obligations under this Agreement, and does not cure such default within thirty (30) days of receipt of written notice of default from the other Party (the "**Default Notice**"), then the non-defaulting Party may, by giving subsequent notice of termination to the defaulting Party ("**Termination Notice**"), terminate this Agreement as of the termination date specified in such termination notice.

B. For the purposes of this Agreement and notwithstanding the foregoing, any Special Default

Event shall be deemed a default entitling CMT, in its discretion, to immediately terminate the Agreement with or without notice to Customer.

C. Upon termination, Customer shall return all System Components to CMT within forty-five (45) days of the termination date specified in the Termination Notice or of the termination by CMT following a Special Default Event. In the event Customer fails to return all System Components within such forty-five (45) days, Customer shall be deemed to have purchased the unreturned System Components at a price equal to Full Replacement Cost and shall be liable to CMT for the payment in full of such amount (the "Purchase Price") within ten (10) days following the expiration of such forty-five (45) day period. Further, upon termination for cause by CMT, all remaining payments due by Customer under this Agreement shall become immediately due and payable.

**10.2 Early Termination Fee.** Customer agrees that, in the event Customer (i) removes or disables the CMT System or any System Component, (ii) terminates this Agreement other than for cause (i.e., terminates for convenience) in accordance with Section 10.1, (iii) fails to remedy a default within the thirty (30) day remedy period, or (iv) there occurs any Special Default Event (each, a "Customer Termination Event"), Customer shall pay an Early Termination Fee (as defined below), in addition to any other Fees articulated herein or amounts due hereunder. "Early Termination Fee" shall be an amount equal to the Monthly Recurring Charges multiplied by the number of months remaining on the contract if the CMT System is returned in good working order. If the CMT System is not returned, is damaged beyond repair, or is removed by someone other than an CMT Authorized Service Center, the Early Termination Fee shall also include the Full Replacement Cost of the CMT System.

**10.3 De-Installation Fee.** Customer agrees that, in the event a Customer Termination Event occurs, Customer shall pay a De-Installation Fee (as defined below), in addition to any other Fees articulated herein or amounts due hereunder. "De-Installation Fee" shall be an amount equal to one hundred twenty-five dollars (\$125.00), which amount may be amended from time-to-time by CMT. If Customer has equipment uninstalled by any Person other than CMT or a CMT Authorized Service Center, Customer shall be responsible for an amount equal to two hundred fifty dollars (\$250.00) to have CMT personnel inspect and verify the operational capability of the improperly de-installed equipment ("Equipment Re-Inspection Fee"), in addition to any other Fees articulated herein or amounts due hereunder.

## 11. REPRESENTATIONS & WARRANTIES.

**11.1 CMT's Representations, Warranties and Obligations.** CMT represents, warrants, and covenants as follows:

A. CMT has full authority to enter into the Agreement and any Order and to provide to Customer, for the benefit of the Customer, the CMT System, all System Components, and the Services;

B. Each item of Hardware separately ordered by Customer and delivered by CMT to Customer for the benefit of Customer pursuant to this Agreement will be new (or like new and operate and appear as if new) and in good working order when delivered and installed;

C. Throughout the applicable warranty period, the CMT System shall be free of any material defects and shall perform in substantial compliance with its specifications;

D. CMT will perform all Services in a professional manner, using qualified personnel trained and skilled in the performance of the applicable tasks and responsibilities;

E. In connection with Credit and Debit Card Services, CMT shall comply in all material respects with all written payment card industry standards (as they may change from time-to-time during the Term) adopted and issued by Master Card International, Visa International, American Express (the "PCI Standards") or the other major credit card providers identified in the PCI Standards where such PCI Standards apply to data security, security audits, and security scanning procedures.

**11.2 Customer's Representations, Warranties and Obligations.** Without limiting any obligations of Customer elsewhere provided, Customer represents, warrants, and covenants as follows:

A. Customer has full authority, without breaching or infringing the rights of any third party, to enter into the Agreement and any Order Forms on its behalf and for the benefit of the Customer and has the ability to meet its financial obligations assumed in this Agreement as and when they become due;

B. To the best of its knowledge and belief, all taxicabs receiving Services hereunder are covered by a valid medallion;

C. Customer shall submit Order Form(s) for the installation of the CMT System;

D. Customer will cooperate with, and cause all Customer Representatives to cooperate with, the installation of the CMT System;

E. Customer shall not, and shall cause Customer Representatives not to, (a) modify (other than modifications incident to normal and permitted use of the CMT System by passengers) or tamper with any content presented via the CMT System; (b) modify or tamper with any data or information collected via the CMT System, or (c) interfere in any way with the passenger's ability to operate the CMT System;

F. Customer shall not, and shall cause the Customer Representatives not to, refuse to accept credit or debit card transactions or discourage passengers from paying fares by credit or debit card, including the imposition of threshold (i.e., minimum) amounts;

G. Customer shall at all times during the Term require all drivers to log in to the CMT Hardware and/or CMT Software in order to operate the vehicle, including the operation of the taximeter;

H. Customer shall at all times during the Term (i) maintain valid insurance coverage with respect to its taxicabs, (ii) be responsible for ensuring its taxicabs comply with applicable Laws and safety standards, and (iii) maintain all licenses, approvals and authority required for Customer to carry on its business;

I. Customer shall cause the Customer Representatives to: (i) comply with the terms of this Agreement throughout the Term, and (ii) not perform any action or permit any omission which would cause Customer to be in breach of its obligations under this Agreement.

## 12. INDEMNIFICATION OBLIGATIONS.

**12.1 General Indemnification.** Each Party ("Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party ("Indemnified Party"), from any and all Losses and threatened Losses arising from or in connection any claims (including third-party claims attributable) to any of the following: (i) the death or bodily injury of any agent, employee, business invitee, or business visitor or other Person proximately caused by the tortious or willful conduct of the Indemnifying Party; (ii) the damage, loss or destruction of any real or tangible personal property proximately caused by the tortious or willful conduct of the Indemnifying Party; (iii) the failure of the Indemnifying Party to comply with any

term of the Agreement, or (iv) any breach of a representation or warranty made by the Indemnifying Party under this Agreement. Where the Indemnified Party if CMT, the Indemnifying Party shall additionally be liable for any of the foregoing actions which is caused by any action or omission of a Customer Representative.

## 12.2 Indemnification Procedures.

**12.2.1 Notice.** The Indemnified Party shall provide prompt written notice of a claim or action subject to the Indemnifying Party's obligations, copies of all papers served on the Indemnified Party relating to the claim or action, and reasonable assistance to the indemnifying Party, at the indemnifying Party's expense, in the defense or settlement of the claim or action. An indemnifying Party shall not be relieved of its obligations under this Section where the indemnified Party fails to comply with this Section except to the extent that the indemnifying Party's ability to defend or settle a claim or action is materially prejudiced.

**12.2.2 Assumption of Defense.** The indemnifying Party shall have the sole right to conduct the defense of any claim or action for which it promptly assumes its defense obligations and all negotiations for its settlement or compromise, unless otherwise mutually agreed to in writing by the Parties hereto. Notwithstanding the foregoing, the Parties agree that the Indemnifying Party: (i) is prohibited from making any settlement or compromise which is not solely monetary (such as, by way of example only, a compromise purporting to impose restrictions regarding how the business of the Indemnified Party is carried on) without the prior written consent of the Indemnified Party, which it may withhold in its sole discretion, and (ii) shall be required, where any claim seeks remedies which are not solely monetary (such as, for example, a safeguard order), to relinquish the control of such claim to the Indemnified Party if the latter makes a written request to this effect. If the indemnifying Party does not promptly assume its defense or settlement negotiation obligations after being informed of a claim or action, the Indemnified Party may take such actions as it deems appropriate to defend or settle the claim or action, and the Indemnifying Party will indemnify the Indemnified Party for any costs associated with such defense or settlement, as well as the amount of any judgment asserted against the Indemnified Party or settlement amount paid by the Indemnified Party.

## 13. LIMITS OF LIABILITY AND SPECIAL DAMAGES.

**13.1 Disclaimer of Special and Consequential Damages.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, FOR ANY LOSS OF INTEREST, PROFIT, OR REVENUES BY THE OTHER PARTY OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES SUFFERED BY THE OTHER PARTY, THAT ARISE FROM OR ARE RELATED TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES; PROVIDED, HOWEVER, THAT THIS CLAUSE WILL NOT PREVENT EITHER PARTY FROM RECOVERING PAYMENTS OWED UNDER THIS AGREEMENT.

## 14. LIMITED WARRANTY & RISK OF LOSS.

**14.1 Limited Warranty.** CMT warrants System Components against defects in material and workmanship under normal use and service for the Term of this Agreement following Installation of the CMT System, subject to ordinary wear and tear ("Limited Warranty"). At its option, CMT will replace the equipment during the warranty period at no charge, as long as it is returned in accordance with the terms of this Agreement and this Limited Warranty. This Limited Warranty does NOT cover:

1. Defects or damage resulting from use of the System Components in other than its normal and customary manner and in accordance with this Agreement and any instructions or guidelines related to same;
2. Defects or damage from misuse, accident, or neglect;
3. Defects or damage from improper testing, operation, maintenance, installation, adjustment, or any alteration or modification of any kind;
4. Equipment disassembled or repaired in a manner which adversely affects performance or prevents adequate inspection and testing to verify any warranty claim;
5. Equipment with labels removed or illegible serial numbers;
6. Defects or damage due to spills of or immersion in food or liquid; and/or
7. Scratches on plastic surfaces, screens, or externally exposed parts, provided the unit is functional and its operation is not, in the reasonable evaluation of CMT, materially impaired by same.

**14.2 Risk of Loss.** At all times, the System Components are and shall remain the property of CMT, and Customer shall be responsible for the loss, theft, or damage to any System Component, from time-to-time, in its possession.

**14.3 Warranty Limitation.** THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED (INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE), AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED BY CMT AND CUSTOMER.

## 15. RIGHTS TO SOFTWARE & CONTENT.

**15.1 Grant of License.** Subject to the satisfaction by Customer of its obligations under this Agreement, CMT hereby grants to Customer, drivers, and passengers a worldwide, perpetual, royalty free, non-transferable, non-exclusive right to access and use the Software (together with any Updates thereto, and including any replacement system, temporary back-up, or substitute therefor) and other CMT Intellectual Property for their intended purpose, as may be provided for hereunder or otherwise covered by the Agreement. Customer hereby grants CMT a non-exclusive license to collect and use anonymous vehicle location data (if any) associated with Customer Fleet without royalty or fee to Customer for the Term of this Agreement.

**15.2 Limitations on Customer's Right to Use CMT Proprietary Property.** Customer acknowledges that, based on the representation of CMT, any source code for the Software (the "Source Code") and other Intellectual Property of CMT (collectively, "CMT Proprietary Property") is proprietary and confidential to CMT. Customer agrees to treat any CMT Proprietary Property provided to Customer as CMT Confidential Information (as defined below). Except to the extent permissible under applicable Law, Customer agrees not to: (a) decompile, Software in violation of CMT's Intellectual Property Rights; (b) disassemble, reverse engineer or tamper with the CMT System or any System Component in violation of CMT's Intellectual Property Rights; (c) create any derivative works (including, without limitation, translations, transformations, adaptations, or other recast or altered versions) based on any CMT Proprietary Property in violation of CMT's Intellectual Property Rights; or (d) authorize any third party to do any of the foregoing.

**15.3 Content.** CMT, unless otherwise agreed in writing by the Parties, shall retain exclusive rights over all content and/or messages broadcast on or affixed to the CMT System. Customer shall not be responsible for content broadcast via the CMT System. CMT, at all times, reserves the right to demand immediate removal of any content and/or messages which are broadcast

on or affixed to the CMT System, including those which are defamatory, obscene, or invade the right of privacy of any Person, or could be injurious to the reputation of CMT (or any of its affiliates). Violation(s) of this provision shall entitle CMT, in its sole discretion, to continue to perform under the terms of this Agreement, to immediately remove CMT Hardware from the vehicle(s) in violation.

## 16. CONFIDENTIALITY.

**16.1 Confidentiality Obligations and Non-Use.** CMT and Customer each acknowledge that the other possesses and will continue to possess Confidential Information developed or received by it, including, but not limited to, the terms of this Agreement. Each Party agrees not to use the Confidential Information for any purpose other than to satisfy its obligations under the Agreement. Except as otherwise specifically set forth herein or agreed in writing by the Parties, "Confidential Information" shall mean all confidential and trade secret information of the Discloser (as defined below), whether or not marked confidential, restricted, proprietary, or with a similar designation at the time of disclosure. During the Term, and for a period of three (3) years following the expiration or earlier termination of the Term, as the case may be, each Party (the "Recipient") shall not disclose the Confidential Information of the other Party (the "Discloser") and shall use at least the same degree of care to safeguard the Confidential Information and to prevent disclosing such information to third parties as Recipient employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own information (or information of its customers) of a similar nature; provided, however, that the Parties may disclose such information to their counsel, and to other third parties performing services required hereunder where (a) use of such third party is authorized by this Agreement; (b) such disclosure is necessary to the third party's performance of its responsibilities; (c) the third party agrees to execute a non-disclosure agreement that is no less protective than this Section 16 with respect to the Discloser's Confidential Information; and (d) the disclosing Party assumes full responsibility for the acts or omissions of such third party. Customer acknowledges and agrees that the contents of this Agreement, including any Order Form, shall be considered Confidential Information of CMT within the meaning set forth above and shall not be disclosed by Customer or any Customer Representative to any third party without the prior written approval of CMT or as permitted under the terms of the preceding sentence.

**16.2 Exceptions to Definition of Confidential Information.** Confidential Information shall not include information which the Recipient can demonstrate (a) was, at the time of disclosure to it, available to the public; (b) after disclosure to it, is published or otherwise becomes available to the public through no fault of the Recipient; (c) was in the possession of the Recipient at the time of disclosure to it or any of its representatives; (d) was received after disclosure to it or any of its representatives from a third party who had a lawful right to disclose such information to it; (e) was independently developed by the Recipient without reference to Confidential Information of the Discloser; or (f) was specifically authorized for collection and use by the Discloser pursuant to the terms of this Agreement.

**16.3 Compelled Disclosure.** Disclosure of Confidential Information shall not violate the confidentiality obligations imposed by this Section if such disclosure (a) is pursuant to a court order; (b) is required by any regulatory agency or other government body of competent jurisdiction; or (c) is reasonably necessary to establish in any legal or other similar proceeding the rights and obligations of the Parties under the Agreement.

## 17. FORCE MAJEURE.

**17.1 Excused Non-Performance.** In no event will either Party be liable to the other for any delay or failure to perform hereunder that is due to Force Majeure Conditions (provided, however, that the non-payment of any amount due at any time pursuant to the Agreement, including any Order Form, shall in no case be excused by any Force Majeure Condition). A "Force Majeure Condition" is a cause or condition preventing performance that is beyond the control of the Party claiming excuse, including acts of God, acts of the public enemy, terrorist acts, labor disputes, strikes, acts of a governmental authority in the jurisdiction where the CMT System or any Service is being or is to be provided, wireless network outages, fires, floods, epidemics, quarantine restrictions, and freight embargoes. Performance times under the Agreement shall be considered extended for a period of time equivalent to the time lost because of any delay excused under this Section.

**17.2 Limits on the Scope of the Excuse.** Notwithstanding the provisions of Section (Excused Non-Performance) above, in every case the delay or failure to perform must be beyond the control and without the fault or negligence of the Party claiming excusable delay and each Party shall exercise all reasonable efforts to mitigate the extent of such delay or failure.

## 18. MISCELLANEOUS PROVISIONS.

**18.1 Assignment.** Customer shall not assign the Agreement, or any of its rights and obligations hereunder, by operation of law or otherwise, without the prior written consent of CMT (such consent not to be unreasonably withheld or delayed), and any such attempted assignment effected otherwise than in accordance with the preceding terms shall be void. CMT may assign the Agreement, along with any or all of its rights and/or obligations hereunder, to (i) any present or future affiliate of CMT, or (ii) any acquirer or licensor of all or substantially all the assets of CMT, or (iii) any entity merging or amalgamating with CMT (collectively, "CMT Assignments"), in each case without the Customer's prior consent. Any assignment permitted hereunder (other than CMT Assignments) will not relieve the assigning Party of any of its obligations under this Agreement or any Order. Furthermore, the Agreement shall be binding on the Parties and their respective legal successors and permitted assigns.

**18.2 Notices.** All notices, requests, claims, demands, and other communications regarding this Agreement shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service (with signature required), by facsimile, or by registered or certified mail (postage prepaid, return receipt requested) to the respective Parties.

**18.3 Subcontracting.** CMT may subcontract the performance of any of its obligations under this Agreement, including any Service, or portion thereof, without notice to or the consent of Customer. CMT shall remain fully responsible for any such obligations which it subcontracts as permitted hereunder, and CMT shall be solely responsible for payments due such subcontractors.

**18.4 Advertising or Publicity.** Neither Party shall use the name of the other in publicity releases, advertisements or other public statements issued by any Party relating to this Agreement or the transaction contemplated hereunder without securing the prior written approval of the other.

**18.5 Governing Law.** The Laws of the State of New York shall govern the validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties hereunder.

**18.6 Modification, Amendment, Supplement, or Waiver.** With the exception of the PCI Standards incorporated herein by reference, all modification, amendment, supplement

to, or waiver of the Agreement or any of its provisions must be made in writing, in hard copy - paper form, and signed by hand by duly authorized representatives of both Parties.

**18.7 No Prejudice for Prior Non-Enforcement.** A failure or delay of a Party to enforce at any time any provision of the Agreement, or to exercise any option under the Agreement, or to require at any time performance of any provision of the Agreement, shall in no way be construed to be a waiver of such provision.

**18.8 Entirety of Agreement.** The Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral, between the Parties with respect to the subject matter hereof.

**18.9 Compliance with Laws.** Subject to Sections 3.4 and 8.1, each Party shall perform its respective obligations pursuant to the Agreement in a manner that complies with all applicable laws. If a charge of non-compliance by a Party with any such laws, regulations, ordinances, or codes occurs, such Party shall promptly notify the other Party of such charges in writing.

**18.10 Severability.** In the event any one (1) or more of the provisions of the Agreement shall for any reason be held to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal, or unenforceable provision(s) shall be replaced by a mutually acceptable provision(s) negotiated by the Parties that, being valid, legal, and enforceable, comes closest to the Parties' intentions related to the underlying invalid, illegal, or unenforceable provision(s).

**18.11 Headings.** The headings in the Agreement are for reference only and shall not in any way limit or otherwise affect the meaning or interpretation of any of the terms hereof.

**18.12 Independent Contractor.** The Parties intend to create an independent contractor relationship and nothing contained in this Agreement shall be construed to make either Customer or CMT partners, joint venturers, principals, agents, or employees of the other. No officer, director, employee, agent, affiliate, or contractor retained by CMT to perform work on Customer's behalf under this Agreement shall be deemed to be an employee, agent, or contractor of Customer.

**18.13 Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties.

**18.14 Survival of Provisions.** The provisions of Sections 2.3 (Ownership of CMT Systems), 12 (Indemnification Obligations), 13 (Limits of Liability and Special Damages), and 18.4 (Advertising or Publicity), and such other provisions that by their nature or effect survive the expiration or termination of the Agreement shall survive.

**18.15 Interpretation.** Reference to any article, paragraph or other section shall be a reference to such article, paragraph or other section as it appears in the Agreement. When used in this Agreement, the term "including" or similar shall be deemed to be followed by "without limitation".

*[End of Terms & Conditions]*