

Updated: June 11, 2024

Terms of Service (Merchant)

These Terms of Service, and the agreements, policies, and documents incorporated herein (collectively, the “**Agreement**”), are entered into by and between Tera Payment Systems, Inc. d/b/a NanoKard (“**NanoKard**”, “**we**”, “**us**” or “**our**”) and you, a legal business entity or individual (“**Merchant**” or “**you**”). This Agreement sets out the terms and conditions under which you may utilize the Services (as defined below).

This Agreement becomes a legally binding contract and is effective as of the earliest date you do any of the following (the “**Effective Date**”):

Submit an application for use of the Services, accept this Agreement online, or begin using the Services. You agree to be bound by the terms of your applicable agreement(s) with any bank, which are incorporated herein by this reference.

PLEASE BE ADVISED THAT THIS AGREEMENT CONTAINS PROVISIONS, INCLUDING AN AGREEMENT TO ARBITRATE, THAT GOVERN HOW CLAIMS YOU AND NANOKARD HAVE AGAINST EACH OTHER ARE RESOLVED, WHICH WILL, WITH LIMITED EXCEPTION, REQUIRE THE PARTIES TO SUBMIT CLAIMS THEY MAY HAVE AGAINST ONE ANOTHER TO BINDING AND FINAL ARBITRATION. UNDER THE AGREEMENT TO ARBITRATE, THE PARTIES WILL (1) ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST EACH OTHER ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING AND (2) ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS.

Agreement

Section 1 — Services

1.01 “Services” means the payment processing services offered by NanoKard which provide merchants with the ability to accept NanoKard payments in a retail store, on a website or mobile application in our approved acceptance network. These services include Gateway Services, a digital NanoKard merchant account, recurring billing functionality, payment information storage, customer support, other software, APIs and services and technology as described on the NanoKard website or the NanoKard app.

1.02 “Gateway Services” means the gateway services offered by NanoKard which provide Merchants with the software and connectivity required to allow real-time secure data transmission for processing of NanoKard payments in a retail store, on a website or mobile application. The Gateway Services include those additional products and services provided by NanoKard, including but not limited to NanoKard payments, ACH Services, push to card, and transaction reporting Services. In addition, the Gateway Services include certain payment technology services provided by third parties that are used to facilitate and monitor your processing

of NanoKard payments (“**Payment Technology Services**”). You acknowledge and agree that the Payment Technology Services are provided solely by the relevant third-party (and not NanoKard) as set forth in the applicable Payment Technology Services terms (Available at Visa: <https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf>; MasterCard: <https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html>; American Express: <https://www.americanexpress.com/us/merchant/merchant-regulations.html>, and that NanoKard will under no circumstances be responsible or liable for any damages, losses or costs whatsoever suffered or incurred by you resulting from any Payment Technology Services.

You acknowledge that NanoKard uses digital wallet accounts for its Gateway Services. You acknowledge and consent to the use of the digital wallet accounts to deposit, transact, and receive funds and agree to disclose same to any of your customers that transact on using the Services. You appoint NanoKard as your limited payment collection agent for the sole purpose of accepting payment on your behalf from your customers for goods or services purchased from you using the Services and, depending on the region, applicable taxes and fees. You agree that payment by any of your customers to NanoKard constitutes payment made directly to you and fully satisfies the customer’s obligation to you for that payment, and you must fulfill your obligations to the customer as if you had received the payment directly from the user.

Section 2 — Fees and Taxes

2.01 Fees

In exchange for us providing you with the Services, you agree to pay us the fees, including applicable transaction, multi-currency and chargeback fees, as listed in the fee schedule, set forth in your Merchant application, and incorporated herein by this reference. We reserve the right to revise our fees at any time, subject to a thirty (30) day notice period to you prior to the new fees taking effect. Interest shall accrue at the lower rate of 1.5% per month, or the maximum amount permitted by law, on all overdue amounts. In the event that you have a good faith dispute as to the amounts due, you agree to pay the undisputed amounts. Interest shall not accrue on any disputed amounts so long as you pay such amounts within thirty (30) calendar days after resolution of the dispute.

2.02 Payment of Fees, Payouts, and Right to Set-off

Subject to the terms of this Agreement, NanoKard will send to the account that you have identified to NanoKard as your primary bank account, or such other account as you designate from time to time (your “**Bank Account**”), all amounts due to you from your transactions (each, a “**Payout**”), minus, without limitation, any fees, reversals, invalidated payments, chargebacks, equipment costs, shipping and handling fees, refunds, amounts required to fund any reserve pursuant to Section 5.03 hereof, and all other amounts that you owe to NanoKard under this Agreement or otherwise. You agree that, if we do not send to your Bank Account any amount due to you pursuant to this Agreement, you will have recourse only against NanoKard. If the Payout is not sufficient to cover the foregoing fees, costs, amounts required to fund any reserve, expenses, or any other amounts due to by you to NanoKard, you agree that we may debit your Bank Account for the applicable amounts, and/or set-off the applicable amounts against future Payouts. Upon

NanoKard's request, you agree to provide NanoKard with all necessary and current bank account, routing, and related information and, pursuant to the terms of this Section 2.02, you grant NanoKard permission to automatically debit amounts from your Bank Account as they become due and payable to NanoKard without your further authorization. Payout may be delayed at NanoKard's sole discretion or as set forth in any other agreement or application between you and NanoKard.

2.03 Taxes

You shall pay, indemnify, and hold NanoKard harmless from (i) any sales, use, excise, import or export, value-added, or similar tax or duty, and any other tax or duty not based on NanoKard's income, and (ii) all government permit fees, customs fees and similar fees which NanoKard may incur with respect to this Agreement. Such taxes, fees and duties paid by Merchant shall not be considered a part of, a deduction from, or an offset against, payments due to NanoKard hereunder.

Section 3—Restricted Activities, Representations and Warranties, American Express Card Acceptance

3.01 You agree that you will not:

- (a) Breach this Agreement, your agreement(s) with any bank, or any other agreement that you have entered into with us in connection with the Services;
- (b) Violate any laws, rules, or regulations applicable to your business;
- (c) Violate any rule, guideline, or bylaw of any of the Associations (the “**Association Rules**”) applicable to your business, as they may be amended by the Associations from time to time.
- (d) Fail to provide us with any information that we reasonably request about you or your business activities, or provide us with false, inaccurate or misleading information;
- (e) Refuse to cooperate in a legal investigation or audit that may be required by the Associations;
- (f) Integrate or use any of the Services without complying with our requirements;
- (g) Utilize recurring billing functionality without properly obtaining your customers' consent to be billed in such a manner;
- (h) Submit any transaction for processing through the Services which does not represent a bona fide, permissible transaction as outlined in this Agreement and in the Association Rules, or which inaccurately describes the product or services being sold or the charitable donations being made;
- (i) Process transactions or receive payments on behalf of any other party, or redirect payments to any other party;

(j) Display with unequal size or prominence, show preference for, or discriminate against one card brand or type over another, including your policies for purchases;

(k) Bill or collect from any NanoKard customer for any purchase or payment on NanoKard unless you have the right to do so under the NanoKard and Association Rules; and Share your password details, credentials, login information, or any other personal user information related to NanoKard or your NanoKard profile with any other person. If you violate the foregoing covenant in this clause (k), then (A) you assume full responsibility for all charges, liabilities, losses, damages, conduct, any other acts of all persons as a result of your sharing such password details, credentials, login information, or other personal user information, and (B) NanoKard will not be responsible or liable for any damages, losses or costs whatsoever suffered or incurred by you resulting from your sharing of such password details, credentials, login information, or other personal user information.

3.02 Representations and Warranties by Merchant

You represent and warrant to NanoKard that you have the full power and authority to execute, deliver and perform this Agreement. This Agreement is binding and enforceable against Merchant, and no provision requiring Merchant's performance is in conflict with its obligations under any agreement to which Merchant is a party.

Merchant is duly organized, authorized and in good standing under the laws of the state, region or country of its organization and is duly authorized to do business in all other states, regions or countries in which Merchant's business operates.

Section 4 — Liability for Invalidated Payments and other Liabilities

You are liable for all claims, expenses, fines and liability that you or we incur arising out of:

(a) a chargeback, refund, over-payment, payment error, or other invalid payment due to you as a merchant failing to fulfill your delivery obligation (each, an "**Invalidated Payment**");

(b) any error, negligence, misconduct or fraud by you, your employees, or someone acting on your behalf; and

(c) any losses resulting from your failure to comply with the terms of this Agreement, or your usage of the Services;

(d) any losses, charges, conduct, or acts of any employee, agent, or any other person that you have granted permission to access your account or otherwise authorized to act on your behalf; and

(e) any losses, charges, conduct, or any other acts of any person resulting from your sharing your password details, credentials, login information, or other personal user information related to NanoKard or your NanoKard profile.

In the event of an Invalidated Payment or other liability, we may deduct the amounts due to NanoKard from your Payouts or automatically from your Bank Account, per the terms of

Section 2.02 hereof.

Section 5 — Actions We May Take

5.01 Credit Report Authorization and Verification of Information

You authorize NanoKard, directly or through third parties, to make any inquiries or take any actions we consider necessary to validate your identity, evaluate your creditworthiness, and verify the information that you have provided to us. You authorize NanoKard to obtain financial and credit information, such as pulling your personal credit report, or the credit report for your directors, officers, and principals. By completing your application to become a NanoKard customer, you are providing NanoKard with written instructions and authorization in accordance with the Fair Credit Reporting Act to obtain such financial information or credit reports.

In the event that we are unsuccessful in receiving satisfactory information for us to verify your identity or determine that you are creditworthy, NanoKard reserves the right to terminate this Agreement with immediate notice to you, cease to provide access to the Services, and refuse or rescind any payment by your customers.

5.02 Actions by NanoKard

If we believe that your transactions pose an unacceptable level of risk, that you have breached the terms of this Agreement, or that your account has been compromised, we may take various actions to avoid liability. The actions we may take include, but are not limited to, suspending or limiting your ability to use the Services, refusing to process any transaction, reversing a transaction, holding your Payouts, and contacting your customers to verify transactions and reduce potential fraud and disputes. If possible, we will provide you with advance notice of our actions and resolution steps. However, advance notice will not be provided if there is an immediate need to take actions such as a security threat, potential fraud, or illegal activity.

5.03 Reserves

You acknowledge that in addition to any other rights afforded us hereunder, we may establish a reserve account at any time in our sole discretion to satisfy your obligations or potential obligations under this Agreement (the “**Reserve**”), which you acknowledge and agree may be funded by: (i) our demand and your immediate payment for such amounts; (ii) our automatic debiting of your Bank Account without the need for your further authorization at the time of such debit; (iii) our withholding your settlement payments until all amounts are paid, (iv) our delaying payment of any refunds until you make a payment to us of a sufficient amount to cover the Reserve; and (v) our pursuit of any remedies we may have at law or in equity.

The Reserve will contain sufficient funds to cover any unbilled processing costs plus our estimated exposure based on reasonable criteria for chargebacks, fines, returns and unshipped merchandise and/or unfulfilled services. We may (but are not required to) apply funds in the Reserve toward, and may set off any funds that would otherwise be payable to you against, the satisfaction of any amounts which are or become due from you pursuant to this Agreement. The Reserve will not bear interest, and you will have no right or interest in the funds in the Reserve; provided that upon

satisfaction of all of your obligations under this Agreement, we will pay to you any funds then remaining in the Reserve. Any funds in the Reserve may be commingled with other funds, and need not be maintained in a separate account.

5.04 Security Interest

Effective upon our establishment of a Reserve, you irrevocably grant to us a security interest in any and all funds held in reserve, together with the proceeds thereof, that may at any time be in our possession and would otherwise be payable to you pursuant to the terms of this Agreement. You agree to execute and deliver to us such instruments and documents that we may reasonably request to perfect and confirm the security interest and right of setoff set forth in this Agreement. The parties' rights and obligations under this Section shall survive termination of this Agreement.

5.05 Excessive Chargeback fees.

You agree that NanoKard shall be entitled to charge an excessive chargeback fee if chargebacks are over 1% of the total transactions processed for the preceding calendar month and the chargeback reason code is failure to deliver or delivered goods not meeting expectations. If at the end of a calendar month, your total chargebacks have exceeded 1% of your total transactions, an excessive chargeback fee of \$99.00 USD will be charged for each chargeback that is over 1% threshold, the excessive chargeback fee will be charged in addition to any other applicable chargeback fees set forth in any fee schedule that you agree to as a part of your Merchant application.

5.06 Transaction Laundering

Transaction laundering, using the credentials of another business, providing inaccurate or false information on your merchant application, and/or misrepresentation of goods or products transacted on our systems, are all expressly prohibited. Any of the aforementioned actions could be a violation of State and/or Federal Law. You give your express consent to a transaction laundering fee of \$100,000. This fee shall be assessed per prohibited act or transaction. Examples of prohibited acts include but are not limited to: (A) transacting using the Services on another URL not disclosed in any application for services that you submit to NanoKard; (C) materially adding, modifying or changing the goods or products sold using your Merchant Account without first notifying NanoKard and obtaining NanoKard's express consent to the new or modified products or goods; or (D) transacting using Services in violation of any law, rule, or regulation applicable to your business.

Section 6 – Account Security, Data, Intellectual Property, and Publicity

6.01 Security of your access. You agree to:

(a) Not allow anyone else to have or use your password details, credentials, login information, or any other personal user information related to NanoKard or your NanoKard profile and to comply with all reasonable instructions we may issue regarding account access and security. In the event you share your password details, credentials, login information, or any other personal user information related to NanoKard or your NanoKard profile, then NanoKard will not

be liable to you for any charges, liabilities, losses, damages, conduct, any other acts of all persons with whom you shared such password details, credentials, login information, or other personal user information related to NanoKard or your NanoKard profile.

(b) Regularly monitor the activity, conduct, and acts of any employee, agent, or any other person that you have granted permission to access your account or otherwise authorized to act on your behalf;

(c) Keep your personal details up to date. We may be unable to respond to you if you contact us from an address, telephone number, or email account that is not registered with us; and

(d) Take all reasonable steps to protect the security of the personal electronic device through which you access the Services (including, without limitation, using PIN and/or password protected personally configured device functionality to access the Services and not sharing your device with other people).

(e) Notify NanoKard and obtain NanoKard's express written consent to any material changes in the products, goods, and services you offer.

6.02 Data Security Compliance

Merchant agrees to comply with applicable data privacy and security requirements under the Payment Card Industry Data Security Standard and any applicable Association data security requirements (including those made available by Visa, MasterCard, American Express, and Discover) with regards to Merchant's use, access, and storage of certain credit card nonpublic personal information. Additionally, Merchant agrees to comply with its obligations under any applicable law or regulation as may be in effect or as may be enacted, adopted or determined regarding the confidentiality, use, and disclosure of cardholder information. You must report any Customer Data breach or incident to NanoKard and/or the Associations immediately after discovery of the incident. You also agree to ensure data quality and that any Customer Data is processed promptly, accurately and completely, and complies with the Associations' technical specifications.

6.03 Ownership of Data

All Customer Data shall be owned by Merchant and Merchant hereby grants NanoKard a perpetual, irrevocable, sub-licensable, assignable, worldwide, royalty-free license to use, reproduce, electronically distribute, and display Customer Data for the following purposes: (i) providing and improving the Services, including the collection, processing and use of Customer Data for the purposes of NanoKard providing and improving the Fraud Protection Tools as part of the Services; (ii) internal usage, including but not limited to, data analytics and metrics so long as such Customer Data has been anonymized and aggregated with other customer data; (iii) complying with applicable legal requirements and assisting law enforcement agencies by responding to requests for the disclosure of information in accordance with local laws; and (iv) any other purpose for which consent has been provided by the Customer. Merchant undertakes to

provide all notices and obtain all consents necessary for NanoKard's use of Customer Data set out above.

6.04 Data Protection

Each Party shall comply with its obligations under all applicable data protection laws in respect of the Services to be provided under this Agreement. Each Party agrees in respect of any such personal data supplied to it by the other Party that it shall: (a) only act on instructions from the other Party regarding the processing of such personal data under this Agreement and shall ensure that appropriate technical and organizational measures shall be taken against unauthorized or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data; and (b) comply with any reasonable request made by the other Party to ensure compliance with the measures contained in this Section.

6.05 Software License

NanoKard grants you a revocable, non-exclusive, non-transferable license to use NanoKard's APIs and other software applications (the "**Software**") in accordance with the documentation accompanying the Software. This license grant includes all updates, upgrades, new versions and replacement software for your use in connection with the Services. If you do not comply with the documentation and any other requirements provided by NanoKard, then you will be liable for all resulting damages suffered by you, NanoKard and third parties. Unless otherwise provided by applicable law, you agree not to alter, reproduce, adapt, distribute, display, publish, reverse engineer, translate, disassemble, decompile or otherwise attempt to create any source code that is derived from the Software. Upon expiration or termination of this Agreement, you will immediately cease all use of any Software.

6.06 NanoKard Trademark Use

Merchant shall not use any of NanoKard's trademarks, logos or other pictures, words or images used to identify the Services (the "**Trademarks**"), unless NanoKard has given you its express written consent to use the Trademarks. Any usage of the Trademarks by Merchant shall be subject to a revocable, non-exclusive, non-transferable license and used solely in conjunction with the Merchant.

The Merchant agrees that it will not at any time during or after this Agreement assert or claim any interest in or do anything that may adversely affect the validity of any Trademark or any other trademark, trade name or product designation belonging to or licensed to NanoKard (including, without limitation registering or attempting to register any Trademark or any such other trademark, trade name or product designation). Upon expiration or termination of this Agreement, you will immediately cease all display, advertising and use of the Trademarks, including the logos and trademarks of the Associations.

6.07 Intellectual Property

Other than the express licenses granted by this Agreement, NanoKard grants no right or license by implication, estoppel or otherwise to the Service or any Intellectual Property Rights of NanoKard.

Each party shall retain all ownership rights, title, and interest in and to its own products and services (including in the case of NanoKard, in the Service) and all Intellectual Property Rights therein, subject only to the rights and licenses specifically granted herein.

6.08 Publicity

Merchant hereby grants NanoKard permissions to use Merchant's name and logo in its marketing materials including, but not limited to use on NanoKard's website, in customer listings, in interviews and in press releases.

6.09 Confidential Information

The parties acknowledge that in their performance of their duties hereunder either party may communicate to the other (or its designees) certain confidential and proprietary information, including without limitation information concerning the Services and the know-how, technology, techniques, or business or marketing plans related thereto (collectively, the "**Confidential Information**") all of which are confidential and proprietary to, and trade secrets of, the disclosing party. Confidential Information does not include information that: (i) is public knowledge at the time of disclosure by the disclosing party; (ii) becomes public knowledge or known to the receiving party after disclosure by the disclosing party other than by breach of the receiving party's obligations under this section or by breach of a third party's confidentiality obligations; (iii) was known by the receiving party prior to disclosure by the disclosing party other than by breach of a third party's confidentiality obligations; or (iv) is independently developed by the receiving party. As a condition to the receipt of the Confidential Information from the disclosing party, the receiving party shall: (i) not disclose in any manner, directly or indirectly, to any third party any portion of the disclosing party's Confidential Information; (ii) not use the disclosing party's Confidential Information in any fashion except to perform its duties hereunder or with the disclosing party's express prior written consent; (iii) disclose the disclosing party's Confidential Information, in whole or in part, only to employees and agents who need to have access thereto for the receiving party's internal business purposes; (iv) take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (v) take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event shall apply less than a reasonable standard of care to prevent disclosure.

Section 7 - Indemnification, Limitation of Liability, Disclaimer of Warranties

7.01 Indemnification

Merchant agrees to indemnify, defend, and hold harmless NanoKard, its parent, affiliates, officers, directors, agents, employees and suppliers from and against any lawsuit, claim, liability, loss, penalty or other expense (including attorneys' fees and cost of defense) they may suffer or incur as a result of (i) your breach of this Agreement or any other agreement you enter into with NanoKard or its suppliers in relation to your use of the Services; (ii) your use of the Services; (iii) your acts or omissions; and/or (iv) violation of any applicable law, regulation, or Association Rules

and requirements arising out of or relating to our provision of the Services to you.

7.02 LIMITATION OF LIABILITY

NANOKARD SHALL NOT BE LIABLE TO YOU OR A THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER CAUSE OF ACTION (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY, OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS; OR LABOR CLAIMS), EVEN IF NANOKARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL NANOKARD'S TOTAL AGGREGATE LIABILITY TO MERCHANT OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE DIRECT DAMAGES SUFFERED BY SUCH PARTY IN AN AMOUNT EQUAL TO THE AMOUNTS PAID OR PAYABLE BY MERCHANT TO NANOKARD UNDER THIS AGREEMENT DURING THE FIRST SIX (6) MONTH PERIOD AFTER THE EFFECTIVE DATE OF THIS AGREEMENT.

7.03 DISCLAIMER OF WARRANTIES

THE SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. NANOKARD DISCLAIMS ALL WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY, TO MERCHANT AS TO ANY MATTER WHATSOEVER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NANOKARD OR ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF NANOKARD'S OBLIGATIONS.

The parties acknowledge that the Services are dependent on computer network-based services which may be subject to outages and delay occurrences. As such, NanoKard does not guarantee continuous or uninterrupted access to the Services. Merchant further acknowledges that access to the NanoKard website or to the Services may be restricted for maintenance. NanoKard will make reasonable efforts to ensure that transactions are processed in a timely manner; however, NanoKard will not be liable for any interruption, outage, or failure to provide the Services.

Section 8 - Term and Termination

8.01 Term and Termination

The term of this Agreement shall commence on the Effective Date and shall continue until

terminated as set forth herein. Either party may terminate this Agreement, without cause, by providing the other party with thirty (30) days' prior written notice of its intent to terminate.

NanoKard may terminate this Agreement or suspend services to you if any of the following occurs: (1) we are required by the Associations, the acquiring bank, or an order from a regulatory body to cease providing services to you; (2) NanoKard is unable to provide the Services as the result of any interruption, outage, or delay in third-party network bases services; (3) we believe that you have breached this Agreement, or are likely to do so; (4) if we determine that your use of the Services carries an unacceptable amount of risk, including credit or fraud risk; or (5) any other legal, reputational, or risk-based reason exists, in NanoKard's sole discretion. In the event that NanoKard must terminate this Agreement, NanoKard shall provide you with written notice as soon as reasonably practicable.

After termination by either party as described above, Merchant shall no longer have access to, and shall cease all use of the Services. Any termination of this Agreement does not relieve Merchant of any obligations to pay any fees, costs, penalties, chargebacks or any other amounts owed by you to us as provided under this Agreement or otherwise, whether accrued prior to or after termination.

Section 9 – General Provisions

9.01 Independent Contractors

The relationship of NanoKard and Merchant is that of independent contractors. Neither Merchant nor any of its employees, consultants, contractors or agents are agents, employees, partners or joint ventures of NanoKard, nor do they have any authority to bind NanoKard by contract or otherwise to any obligation. None of such parties will represent anything to the contrary, either expressly, implicitly, by appearance or otherwise.

9.02 Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for any reason, the remaining provisions not so declared shall nevertheless continue in full force and effect, but shall be construed in a manner so as to effectuate the intent of this Agreement as a whole, notwithstanding such stricken provision or provisions.

9.03 Waiver

No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

9.04 Assignment

This Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

Merchant may not assign this Agreement without the written consent of NanoKard. NanoKard may assign this Agreement in its sole discretion without the written consent of Merchant.

9.05 Amendment

You acknowledge and agree that NanoKard may amend this Agreement at any time by posting a revised version of it on its website. The revised version will be effective at the time it is posted unless a delayed effective date is expressly stated in the revision. Any use of the Services after the posting of a revised version of this Agreement on our website will constitute your agreement to such changes and revised versions. If you do not agree to the updated terms, you can terminate your Agreement by providing us with notice in the manner indicated below in Section 9.09.

9.06 Entire Agreement

This Agreement sets forth the entire agreement and understanding of the parties hereto in respect to the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, partner, employee or representative of any party hereto. This Agreement shall be binding upon and shall inure only to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer upon any persons or entities not parties to this Agreement, any rights or remedies under or by reason of this Agreement.

9.07 Survival

Sections 2 (Fees and Tax), 4 (Liability for Chargebacks, Invalidated Payments and other Liabilities), 5 (Actions We May Take), 6.08 (Confidential Information), 7 (Indemnification, Limitation of Liability, Disclaimer of Warranties), 8 (Term and Termination, Data Portability), 9 (General Provisions), as well as any other terms which by their nature should survive, will survive the termination of this Agreement.

9.08 Communication; Recording Calls; and Availability of Contractual Documents

You consent to receive autodialed or prerecorded calls and text messages from NanoKard at any telephone number that you have provided us or that we have otherwise obtained to (i) notify you regarding your account; (ii) collect a debt; (iii) resolve a dispute; (iv) contact you about exclusive offers; or (v) as otherwise necessary to service your account or enforce the Agreement. Standard telephone minute and text charges may apply.

We may share your telephone numbers with our service providers (such as billing or collections companies) who we have contracted with to assist us in pursuing our rights or performing our obligations under the Agreement, our policies, or any other agreement we may have with you. You agree these service providers may also contact you using autodialed or prerecorded calls and text messages, only as authorized by us to carry out the purposes we have identified above, and not for their own purposes.

NanoKard may, without further notice or warning and in its discretion, monitor or record telephone

conversations you or anyone acting on your behalf has with NanoKard or its agents for quality control and training purposes or for its own protection.

If you have a question or complaint relating to the Services or your transactions, please contact the NanoKard customer support as defined in the “Contact” tab of the NanoKard website.

9.09 Notices, Contracting Entity, Governing Law, and Jurisdiction

a. Contracting Entity. “NanoKard,” “we,” and “our” in this Agreement refer to Tera Payment Systems, Inc. d/b/a NanoKard, 1111 Brickell Avenue, Suite 1820, Miami, FL 33131.

b. Notice to Merchant. Merchant agrees that NanoKard may provide notices and disclosures to Merchant by posting them on NanoKard’s website, emailing them to Merchant, or sending them to Merchant through postal mail. Notices sent to Merchant by postal mail are considered received by Merchant within three (3) Business Days of the date NanoKard sends the notice unless it is returned to NanoKard. Disclosures and notices posted on NanoKard’s website or emailed shall be considered to be received by you within twenty-four (24) hours of the time it is posted to our website or emailed to you unless we receive notice that the email was not delivered. Furthermore, you understand and agree that if NanoKard sends you an email but you do not receive it because your primary email address on file is incorrect, out of date, blocked by your service provider, or you are otherwise unable to receive electronic communications, NanoKard will be deemed to have provided the communication to you. In addition, NanoKard may send Merchant emails, including, but not limited to, those relating to product updates, new features and offers and Merchant hereby consents to such email notification. You also agree that electronic disclosures and notices have the same meaning and effect as if we had provided you with a paper copy.

c. Choice of Law and Jurisdiction. The laws of the State of California, without regard to principles of conflict of laws, will govern this Agreement and any claim or dispute that has arisen or may arise between the parties, except as otherwise stated in this Agreement.

9.10 Agreement to Arbitrate

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND WILL IMPACT HOW CLAIMS YOU AND NANOKARD HAVE AGAINST EACH OTHER ARE RESOLVED.

You and NanoKard agree that any and all disputes or claims that have arisen or may arise between you and NanoKard shall be resolved exclusively through final and binding arbitration rather than in court, except that you may assert claims in small claims court, if your claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The Federal Arbitration Act governs the interpretation and enforcement of this provision.

THE PARTIES ALSO AGREE THAT YOU AND NANOKARD MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE ACTION, OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND NANOKARD

AGREE OTHERWISE, THE ARBITRATOR(S) MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR(S) MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER NANOKARD MERCHANTS.

The arbitration will be conducted by the Judicial Arbitration & Mediation Services (“**JAMS**”) pursuant to its Streamlined Arbitration Rules and Procedures, as modified by this Agreement to Arbitrate. Payment of all filing, administration, and arbitrator fees will be governed by the JAMS rules. All issues are for the arbitrator to decide, except that issues relating to arbitrability, or the scope or enforceability of this agreement to Arbitrate, shall be for a court of competent jurisdiction to decide. If a court decides that any part of this Section is invalid or unenforceable, the other parts of this Section shall still apply.

The arbitration shall be held in San Diego, California or another mutually agreed upon location. NanoKard may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on you and NanoKard subject to the discretion of the arbitrator(s) to require an in-person hearing, if the circumstances warrant. In cases where an in-person hearing is held, you and/or NanoKard may attend by telephone, unless required otherwise by the arbitrator(s).

The arbitrator(s) will decide the substance of all claims in accordance with the laws of the State of California, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator(s) shall not be bound by rulings in prior arbitrations involving different merchants, but is/are bound by rulings in prior arbitrations involving the same merchant to the extent required by applicable law. The arbitration award shall be final and binding and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.