



POS MERCHANT SERVICES TERMS AND CONDITIONS

SECTION 1. SERVICES

- 1.1 Provided Devices.** During the Term and subject to the terms and conditions of this Agreement, POSaBIT will make available to Merchant the Provided Device(s) for use solely in connection with the Services.
- 1.2 Hosted System.** During the Term and subject to the terms and conditions of this Agreement, Merchant will be authorized to access and use the Hosted System and the features and functions made available through the Hosted System for which Merchant has paid or agreed to pay the applicable fees and other charges.
- 1.3 Support and Training.** During the Term and subject to the terms and conditions of this Agreement, POSaBIT will use commercially reasonable efforts to provide Merchant with the Support and Training Services described in the attached [Appendix C](#). POSaBIT may make additional support services available from time to time during the Term for additional fees or other charges, but any such services will not be Support and Training Services unless and until Merchant has paid the applicable fees and charges.
- 1.4 Other Products or Services.** During the Term, POSaBIT may make other Services available to Merchant for fees and other charges established by POSaBIT under the terms of this Agreement and any other terms and conditions communicated by POSaBIT specific to any such additional Services.
- 1.5 Changes to Services.** POSaBIT may modify the Hosted System and change or discontinue provision of any Services at any time at POSaBIT's discretion without incurring any liability whatsoever, and will provide notice to Merchant following any material modifications or changes to the Hosted System or Services.
- 1.6 Suspension of Services.** In the event that Merchant fails to pay any amounts owed under this Agreement or otherwise materially breaches any provision of this Agreement, POSaBIT may, in addition to any other rights or remedies, suspend or limit access to all or any portion of the Services.
- 1.7 Delegation.** POSaBIT may perform any of its obligations or exercise any of its rights under this Agreement through one or more of its Affiliates or subcontractors, provided that POSaBIT remains responsible for their performance.
- 1.8 Authorized Users and Binding Actions.** Merchant is solely responsible for designating one or more authorized users (each, a "System Administrator") to access and manage the Services on its behalf. POSaBIT may rely on any actions taken through a System Administrator's credentials, including activation of Services, acceptance of updated pricing or terms, submission of support requests, or additional equipment requests. Merchant acknowledges that such actions will be deemed authorized and binding upon Merchant. Merchant is responsible for ensuring that only appropriate and authorized personnel are granted administrative access.

SECTION 2. MERCHANT ACCOUNT AND INFRASTRUCTURE

- 2.1 Merchant Account.** Merchant will create and maintain a POSaBIT Account by providing all information required to be submitted by POSaBIT upon account creation and from time to time thereafter. All information provided by Merchant must be accurate, complete and not misleading. Merchant will update any information that no longer conforms to the requirements of the preceding sentence from time to time during the Term using the Hosted System or, if the Hosted System does not have any method for updating the information, by providing written notice to POSaBIT. POSaBIT may disclose any information provided by Merchant in connection with the creation of the POSaBIT Account as well as information about Merchant's POSaBIT Account with the Governmental Authorities for (a) regulatory or compliance purposes, (b) for use in connection with the provision of the Services, (c) for POSaBIT risk management purposes, and (d) for compliance with Applicable Law. Merchant authorizes POSaBIT to conduct a credit and business background check using any tax identification numbers provided by Merchant at the time of POSaBIT Account creation and periodically thereafter during the Term. The credit check will not show up on Merchant's credit report.
- 2.2 Login Credentials; Security.**
- 2.2.1 Issuance.** Merchant will create and/or be issued Login Credentials for accessing and using its account on the Hosted System. Merchant's use of the Login Credentials to access and use the Hosted System and other Services is subject to the terms of this Agreement and any other terms that POSaBIT may propose and Merchant may agree to in the course of using the Hosted System.
- 2.2.2 Protection and Use of Login Credentials.** Merchant is responsible for maintaining the confidentiality of its Login Credentials and for restricting access to the Login Credentials to those Authorized Employees of Merchant that Merchant has authorized to access and use the Hosted System. Merchant will be bound by, and hereby authorizes POSaBIT to accept and rely on, any agreements, instructions, orders, authorizations and any other actions made, provided or taken by anyone who has accessed or used the Hosted System using the Login Credentials. POSaBIT may continue to rely on the preceding sentence unless and until

Merchant notifies POSaBIT in writing that the security of any particular Login Credentials have been compromised, at which point, the preceding sentence will cease to apply to the compromised Login Credentials but will continue to apply to any other Login Credentials or any substitute Login Credentials issued to replace the compromised Login Credentials.

2.2.3 Security. POSaBIT has implemented technical, logistical and administrative measures designed to secure Merchant's Login Credentials and other information on the Hosted System from accidental loss and from unauthorized access, use, alteration, or disclosure. However, POSaBIT cannot guarantee that unauthorized third parties will never be able to defeat those measures or use Merchant's information for improper purposes. Merchant acknowledges that Merchant provides any information uploaded or stored on the Hosted System at Merchant's own risk.

2.3 Infrastructure Requirements. Merchant will obtain and maintain necessary power and authorized Internet network connectivity (including, to the extent necessary, wireless network connectivity) and connect (and maintain the connection of) the Provided Devices to the applicable network, as well as provide and maintain facilities and environmental conditions suitable for use and operation of the Provided Devices and access and use of the Services. For example, and without limitation, Merchant will (a) ensure that the Provided Device is connected to the Internet and is accessible to individuals in a location that is secure and monitored during all Business Hours, (b) ensure that the Provided Printer is connected to the Internet, stocked with the provided thermal paper from POSaBIT, and in a location that is secure and monitored during all Business Hours, and (c) ensure that the Provided Scanner is connected to the Provided Terminal via Bluetooth and in a location that is secure and monitored during all Business Hours.

2.4 Authorized Locations. The Authorized Locations at which Merchant is authorized to install and use the Provided Devices and access and use the Services are set forth in Appendix B attached to this Agreement. The number of Authorized Locations may be increased from time to time during the Term by mutual agreement of the parties and payment by Merchant of any additional fees and other charges. The number of Authorized Locations may be decreased from time to time during the Term by terminating Services with respect to a particular Authorized Location. In either case and in the case of any change to the address of any Authorized Location, the parties will execute an addendum to the agreement with a new Appendix B reflecting the correct number and addresses of all Authorized Locations that will be attached to this Agreement and that will supersede any prior Appendix B. Merchant will not install or use any Provided Devices or access or use any Services (other than Services that can be accessed or used through any computer with Internet connectivity, e.g., checking account activity, balances or other administrative functions) at any locations other than the Authorized Locations.

2.5 Inspection of Documentation and Premises. Upon creation of Merchant's POSaBIT Account and from time to time thereafter during the Term POSaBIT may require Merchant to provide (a) original or copies of driver's licenses or other identification documents, (b) original or copies of business licenses or any other licenses or permits from any Governmental Authority, and (c) access to any Authorized Locations in order to confirm Merchant's compliance with the terms of this Agreement and/or Applicable Law. If Merchant refuses or fails to promptly provide any of the foregoing, POSaBIT may, in addition to any other rights and remedies, terminate this Agreement and the Services without any liability to Merchant.

2.6 Merchant Representations and Warranties. Merchant represents and warrants to POSaBIT that on the Effective Date and at all times during the Term that:

- (a) Merchant is duly formed in the state set forth on the cover page and has the right, power and authority to enter into this Agreement and perform all of its obligations under this Agreement;
- (b) Merchant is qualified to do business and has all necessary licenses to do business in any state in which it conducts business;
- (c) Merchant will not use the Services for or in connection with any illegal, unauthorized, fraudulent or improper business or activity or otherwise in violation of any Applicable Law;
- (d) Merchant will not use the Services in any manner that interferes with the operation of the Services;

SECTION 3. PROVIDED DEVICES

3.1 Generally. After creation of Merchant's POSaBIT Account, POSaBIT will deliver to each Authorized Location a set of Provided Devices solely for use in connection with the Services. POSaBIT may deliver additional devices, hardware or equipment from time to time during the Term at POSaBIT's discretion. Any such additional devices, hardware or equipment will be Provided Devices for purposes of this Agreement.

3.2 Equipment. Any equipment rented or loaned from POSaBIT will be used for the purpose of the Services. Merchant must return equipment to POSaBIT in good workable condition and at their own expense, including shipping and insurance, within thirty (30) days of termination of service. Failure to return in thirty (30) days from termination of service may result in POSaBIT withdrawing the full replacement cost of the hardware from Merchant's designated bank account.



3.3 Updates. POSaBIT has designed the Hosted System so that the software on the Provided Devices will update via the POSaBIT application as long as the Provided Devices are properly connected to the Internet. Merchant will ensure that all Provided Devices are properly connected to the Internet at all times so that the Updates can be installed and will otherwise be responsible for ensuring that any Updates provided by POSaBIT are installed on the Provided Devices.

3.4 Modifications; Abuse. Merchant will not, and will not permit or suffer any other Person to (a) modify, hack, jailbreak, alter or otherwise tamper with any Provided Device, (b) abuse, misuse, neglect or damage any Provided Device, or (c) install any app or other software on any Provided Device (other than Updates provided by POSaBIT). Any violation of this Section 3.4 may result in immediate termination of the Services by POSaBIT.

3.5 Risk of Loss; Rented or Loaned Equipment. For any equipment rented or loaned from POSaBIT, the risk of damage, destruction, loss or theft, from any cause whatsoever, shall pass to Merchant upon POSaBIT's delivery of such equipment to Merchant. In the event that any equipment is damaged, destroyed, lost or stolen while in Merchant's possession, Merchant shall be liable to POSaBIT for the full cost of repair or replacement for such equipment, including shipping and insurance. In the event that POSaBIT hardware is damaged, destroyed, lost or stolen while in Merchant's possession, Merchant authorizes POSaBIT to withdraw the full repair or replacement cost of the hardware from Merchant's designated bank account.

SECTION 4. FINANCIAL TERMS

4.1 Fees. Fees are outlined in Section A of this Agreement. Below are terms of all fees.

4.1.1 Implementation Fee. POSaBIT will charge the one-time implementation fee for each Authorized Location based on equipment requirements (the "Implementation Fee").

4.1.2 Monthly Fee. Where applicable, POSaBIT will charge a monthly fee for equipment and services (the "Monthly Fee").

4.1.3 ACH. POSaBIT will deduct all amounts owed by Merchant via ACH from Merchant's designated bank account. If Merchant opts to pay Fees using a payment method other than ACH, such as credit card or other method of payment, a monthly fee of \$50.00 will be charged to Merchant's account for as long as such other form of payment is used.

4.2 Payment; No Set-off. POSaBIT will issue electronic invoices to Merchant for any fees payable under this Agreement. Unless otherwise agreed in writing, such fees will be deducted automatically via ACH from the Merchant's designated bank account on or immediately following the date of invoice. Merchant agrees to maintain sufficient funds in its designated account to cover all such payments. If a payment is returned or dishonored for any reason whatsoever, Merchant will be subject to a fee of \$50.00 per occurrence, payable during the next billing cycle. POSaBIT may deduct any and all Fees or other amounts owed under this Agreement from any amounts payable to Merchant pursuant to Section 4.1. All payments due to POSaBIT under this Agreement will be made without deduction, hold-back, or set-off, and Merchant will have no right to deduct or set off amounts from payments due to POSaBIT. For the avoidance of doubt, all Fees due through the end of the Term, including any Early Termination Fee, shall become immediately due and payable upon termination.

4.3 Taxes. Merchant will be responsible for, and will pay or reimburse POSaBIT for, any taxes, levies, tariffs and fees, however designated (including sales and use tax, stamp tax, property taxes, excise and value-added taxes, customs duties, and similar tariffs and fees), imposed on POSaBIT by any governmental authorities or customs based upon any payments, fees, or transactions related to the Services, or levied upon or assessed against the sale, delivery or use of the Products other than taxes based on POSaBIT's net income ("Taxes"). When POSaBIT has the legal obligation to collect such Taxes, the appropriate amount will be added to the invoice sent from POSaBIT to Merchant and paid by Merchant unless Merchant provides POSaBIT with a valid tax exemption certificate authorized by the appropriate taxing authority. In the event that such Taxes are legally imposed initially on POSaBIT or POSaBIT is later assessed by any taxing authority, then Merchant will promptly reimburse POSaBIT for such Taxes plus any interest and penalties suffered by POSaBIT. Merchant agrees to indemnify POSaBIT in connection with any claim relating to such Taxes. All payments will be made free and clear without deduction for any and all present and future Taxes imposed by any taxing authority.

4.4 ACH-Based Payment; Interest. All fees, charges, and other amounts payable under this Agreement will be collected via ACH debit from the Merchant's designated bank account, as described in Section 4.2. Any amount not successfully collected when due will accrue interest at the rate of 1.5% per month (or the maximum rate permitted by law, if less), calculated daily and compounded monthly. Merchant will also reimburse POSaBIT for all costs incurred in collecting any past due amounts, including reasonable attorneys' fees.

4.5 Audit. During the Term and for three (3) years thereafter, Merchant will maintain adequate books and records relating to the sale of Products hereunder. Upon POSaBIT's reasonable request, and to the extent required by POSaBIT's auditor or regulatory authority, Merchant will provide access to such books and records during Merchant's normal business hours for examination,

reproduction and audit by POSaBIT or its representatives in order to confirm Merchant's compliance with the terms of this Agreement and/or Applicable Law; provided that unless a prior audit had revealed a discrepancy, Merchant will not be required to permit any such audit more than once during any twelve (12) month period. If any such audit discloses any underpayment of the fees due hereunder, Merchant will immediately pay to POSaBIT any deficiency, plus interest, as provided for under Section 4.4 of this Agreement. If the deficiency for the period audited is material (e.g., in excess of five percent (5%) of the fees actually paid), Merchant will reimburse POSaBIT for the costs incurred by POSaBIT to conduct the audit.

4.6 Changes to Fees. POSaBIT may, by written notice to Merchant, change the amount of any Fees and other amounts payable by Merchant under this Agreement. Unless otherwise required by law, such changes will become effective thirty (30) days after written notice is provided to Merchant. Continued use of the Services after the effective date of such fee changes will constitute Merchant's acceptance of the updated Fees.

SECTION 5. OTHER OBLIGATIONS OF MERCHANT

5.1 Customer Support. In performing customer service, Merchant will always present Merchant as a separate and distinct entity and business from POSaBIT.

5.2 Problem Tracking and Reporting. Merchant will (a) promptly investigate and report to POSaBIT (in the manner designated by POSaBIT) all suspected and actual problems with the Hosted System and all complaints from Customers and Authorized Employees with respect thereto.

5.3 Compliance with Laws. Each Party will comply with all applicable laws, regulations, rules, orders and other requirements, now or hereafter in effect, of any applicable governmental authority, in its performance of this Agreement, its marketing and distribution of the Products, and its provision or use of the Services.

5.4 Public Relations. Merchant will conduct its business and activities in such a manner so as to promote a good image and public relations for POSaBIT, and will not participate in any promotion, advertising, marketing or sale of any products or services offered by competitors of POSaBIT.

5.5 No Unauthorized Warranties. Merchant will not make or extend on behalf of POSaBIT any warranty with respect to the Hosted Service except as may be expressly authorized in writing by POSaBIT. Merchant will defend, indemnify and hold harmless POSaBIT from any claims, damages, liability, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or in connection with any such unauthorized representation or warranty.

5.6 Customer Data; Privacy. In connection with use by Merchant, Cardholders or Customers of the Services, Merchant may receive information about Cardholder, Customers or other Third Parties. Merchant will keep such information confidential and only use it in connection with the Services to promote their business or the POSaBIT business. Merchant is solely responsible for compliance with any privacy laws applicable to your use of the Services, including without limitation the Health Insurance Portability and Accountability Act and the Gramm-Leach Bliley Act.

5.7 Ownership Change Processing. Merchant must provide POSaBIT with at least ten (10) business days' advance written notice of any change in ownership or control of Merchant or its operations. POSaBIT may charge a one-time administrative fee to process such changes, which may include updating technical configurations, system permissions, reporting hierarchies, or banking and tax information. POSaBIT will not be responsible for delays or service interruptions arising from insufficient or late notice.

SECTION 6. SERVICES WARRANTY AND DISCLAIMERS

6.1 POSaBIT Warranty. POSaBIT warrants to Merchant that the Services will substantially conform in all material respects to the Specifications provided by POSaBIT to Merchant. If Merchant gives POSaBIT written notice of noncompliance with the warranty in the preceding sentence POSaBIT will: (a) use reasonable efforts to correct the nonconforming Services, (b) if POSaBIT determines at its discretion that the Specifications are erroneous, modify the Specifications so that the error is corrected, or (c) terminate this Agreement or the affected Services and refund any Fees paid by Merchant in advance for periods during which Services will not be provided. If POSaBIT is unable to fix the noncompliant issues within thirty (30) days of notification, Merchant may immediately terminate the Agreement without early termination penalty. The foregoing sets forth POSaBIT's entire liability and Merchant's sole remedy for any breach of warranty under this Section 6.1.

6.2 Warranty Limitations. POSaBIT does not warrant that the Services will be failsafe or free of all errors or defects. POSaBIT makes no warranty with respect to defective conditions, malfunctions, non-conformities, or other errors resulting from (a) Merchant's (or any Third Party's) misuse, mis installation, mishandling, neglect, accident or abuse of any Services, (b) Merchant's (or any Third Party's) incorporation or combination of any Services with any other product, service or system, or (c) failure of Merchant to apply or install any POSaBIT provided modification, correction or other Update.

6.3 Disclaimer. THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND POSABIT DISCLAIMS ANY AND ALL OTHER WARRANTIES AND REMEDIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, SPECIMEN OR PROTOTYPE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY MERCHANT FROM POSABIT OR THROUGH THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, POSABIT DOES NOT WARRANT THAT THE SERVICES ARE ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICES WILL MEET MERCHANT’S OR CUSTOMER’S REQUIREMENTS; THAT THE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, OR BE UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES ARE DOWNLOADED AT MERCHANT’S OWN RISK AND MERCHANT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO MERCHANT’S PROPERTY OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD.

POSABIT DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICES ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICES OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND POSABIT WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN MERCHANT AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

6.4 Third-Party Products. All Provided Devices and any other hardware, software, product or service provided by a Third Party that is included or sold with the Services are provided solely according to the warranty and other terms specified by the manufacturer, who is solely responsible for service and support for its product. For service, support, or warranty assistance, Merchant should contact the manufacturer directly. POSABIT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH THIRD-PARTY PRODUCTS, AND EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL POSABIT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR COVER DAMAGES ARISING OUT OF MERCHANT’S USE OF OR INABILITY TO USE THIRD-PARTY PRODUCTS OR ANY AMOUNT IN EXCESS OF THE AMOUNT PAID BY MERCHANT FOR THE PRODUCT THAT GIVES RISE TO ANY CLAIM.

SECTION 7. PROPRIETARY RIGHTS

7.1 Ownership. As between POSaBIT and Merchant, POSaBIT owns all right, title and interest in and to: (a) the Services, including without limitation the Hosted System, Provided Devices, all software on the Provided Devices, the Specifications, POSaBIT Confidential Information and any other information or materials provided by POSaBIT as well as any Improvements to any of the foregoing, including Improvements based on Feedback, use of the Services, or aggregated and anonymized data derived from use of the Services (collectively, the “**Proprietary Materials**”); and (b) all Proprietary Rights in any Proprietary Materials. At no time will Merchant challenge or assist others to challenge any of POSaBIT’s Proprietary Rights in the Proprietary Materials or any parts thereof against POSaBIT or its Affiliates, or their respective licensors, licensees, suppliers, manufacturers, distributors, contractors, customers, end users or any of their respective Affiliates.

7.2 Feedback. Merchant will not be entitled to, and hereby waives any claim for compensation, based on any Feedback or any Improvements made based on any Feedback.

7.3 Prohibited Activities. Merchant will not, and will not assist, permit or suffer any Third Party to:

(a) make, copy, reproduce, sell, license, distribute, publicly display, republish, upload, transmit, import, export, modify, alter, or create derivative works (or offer to do any of the foregoing) of any Proprietary Materials;

(b) provide services to Third Parties using or based on any Proprietary Materials or otherwise permit Third Parties to benefit from the Proprietary Materials through a rental, lease, timesharing, service bureau or other arrangement;

(c) access or monitor any Proprietary Materials using any robot, spider, scraper or other automated means;

(d) bypass or circumvent any technical limitation or security feature of any Proprietary Materials or use or enable any feature or function of any of the Proprietary Materials that has been disabled by POSaBIT;

(e) decompile, disassemble or reverse engineer any of the Proprietary Materials, or attempt or seek to do any of the foregoing, except to the extent that such a restriction is expressly prohibited by Applicable Law;

(f) transfer or sublicense any rights under this Agreement;

(g) perform or attempt to perform any actions that would interfere with the proper working of the Services, prevent access or use of the Services by POSaBIT's other customers, or impose an unreasonable or disproportionately large load on POSaBIT's infrastructure; or

(h) otherwise use the Services except as expressly allowed under this Agreement.

7.4 Trademarks. Merchant is not granted any right or license to use any POSaBIT Trademarks. POSaBIT may use and display the POSaBIT Trademarks on the Hosted System, including through the Provided Terminal and any web sites. All use of the POSaBIT Trademarks and any goodwill associated therewith will inure solely to POSaBIT. Merchant will not register or seek to register any marks similar to any POSaBIT Trademarks in any jurisdiction in the world.

7.5 Use of Data. POSaBIT may collect, analyze, and use data generated from Merchant's use of the Services, including transaction and operational data. To the extent such data is de-identified and/or aggregated such that it does not identify any individual or specific consumer personal information, as defined under applicable privacy law, POSaBIT may use such data for any lawful purpose, including but not limited to benchmarking, analytics, product development, and commercial licensing to third parties.

7.6. API and Data Access Restrictions. Merchant shall not access or attempt to access POSaBIT's systems or data through any application programming interface (API), data feed, scraping tool, or other automated method unless expressly authorized in writing by POSaBIT. POSaBIT may limit, revoke, or condition any such access at any time in its sole discretion. All access to POSaBIT APIs or data services is subject to POSaBIT's applicable technical documentation, usage limits, and licensing terms, which may be modified from time to time. Merchant shall not share, resell, or sublicense any such access without POSaBIT's prior written consent.

SECTION 8. TERM AND TERMINATION

8.1 Term. This Agreement is effective as of the Effective Date and will continue in force for the initial term listed in Section A (the "**Initial Term**"). Upon the expiration of the Initial Term, this Agreement will automatically renew as indicated in Section A (each, a "**Renewal Term**" and, together with the Initial Term, the "**Term**"). Either Party may terminate this Agreement at the end of the Initial Term or any Renewal Term by providing the other Party with notice of termination at least thirty (30) days prior to the end of such Initial Term or Renewal Term.

8.2 Breach or Default. Either Party may terminate this Agreement immediately by giving the other Party written notice of termination if such other Party fails to cure any material breach of or default under this Agreement (including, without limitation, failure to pay any amounts when due) within thirty (30) days after receiving written notice thereof; provided, however, that in the case of non-payment, POSaBIT may terminate this Agreement immediately without providing a cure period.

8.3 Early Termination Fee. If Merchant terminates the Agreement for convenience before the expiration of the Term, or if POSaBIT terminates this Agreement early due to Merchant's breach as set forth in Section 8.2, then, in addition to any outstanding fees owed by Merchant at termination, Merchant shall pay an "Early Termination Fee" equal to the SaaS fees and equipment rental fees (if Merchant is renting equipment) for each month remaining in the current Term. If equipment rental fees were waived or discounted by POSaBIT, Merchant shall reimburse POSaBIT in an amount equal to what Merchant would have paid from the Effective Date to the date of termination. If such early termination occurs within the Initial Term, Merchant shall pay POSaBIT an amount equal to one year of SaaS fees and equipment rental fees (if Merchant is renting equipment) as stated above. Early Termination Fees for rented equipment are based on POSaBIT's standard rental fees in effect on the termination date. Merchant authorizes POSaBIT to deduct Early Termination Fees (and any other amounts owed under this Agreement as of the termination date) from Merchant's designated bank account.

8.4 Effect of Termination. Upon termination of this Agreement, the following will apply unless otherwise agreed upon by the Parties:

(a) any funds that POSaBIT is holding in custody for Merchant at the time of termination, less any applicable Fees, other amounts payable to POSaBIT, and other amounts that POSaBIT is entitled to withhold under this Agreement, will be paid out to Merchant according to Merchant's payout schedule, assuming all payout-related authentication requirements have been fulfilled (for example, Merchant may not close its POSaBIT Account as a means of evading a payout schedule);

(b) if a dispute or investigation is pending at the time of termination, POSaBIT may hold Merchant's funds as described in this Agreement until such time as it is determined that Merchant is entitled to some or all of the funds subject to the dispute;

(c) all amounts payable by Merchant under this Agreement will become immediately due;

(d) Merchant will immediately cease to use the Services and will return any rented equipment, Provided Devices, or hardware within thirty (30) days of termination at Merchant's expense, including shipping and insurance. In the event that Merchant does not return any rented equipment, Provided Devices, or hardware, within thirty (30) days of termination, Merchant authorizes POSaBIT to withdraw the full replacement cost of such rented equipment, Provided Devices, or hardware from Merchant's designated bank account.

(e) Merchant will immediately return to POSaBIT or destroy any and all Confidential Information of POSaBIT and copies of any Proprietary Materials in the possession or control of Merchant; provided, however, Merchant may retain one copy of Confidential Information for archival or audit purposes and/or to the extent required by applicable law; and

(f) Merchant will provide to POSaBIT a Deletion Certificate for all Confidential Information and Proprietary Materials destroyed pursuant to the preceding subsection (e).

8.5 Survival. Merchant's payment obligations under this Agreement, a Party's liability and obligations resulting from acts or omissions occurring prior to termination, and Sections 5.4, 6, 8.2, 8.4, 9, 10, 11 and 12 will survive termination of this Agreement.

SECTION 9. INDEMNIFICATION

9.1 Merchant will defend, indemnify and hold harmless POSaBIT (and POSaBIT's employees, directors, agents, Affiliates and representatives) from and against any and all claims, costs, losses, damages, judgments, Tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding ("Claims") instituted by a Person or Governmental Authority that arises out of or relates to: (a) any actual or alleged breach of Merchant's representations, warranties, or obligations set forth in this Agreement, including without limitation any violation of Applicable Law, or POSaBIT policies; (b) Merchant's wrongful or improper use of the Services; (c) any Transaction submitted by Merchant or at any Authorized Location using the Services (including without limitation the accuracy of any transaction information that Merchant provides or any claim or dispute arising out of Products offered or sold by Merchant); (d) Merchant's violation of any rights of any Third Party, including without limitation any right of privacy, publicity rights or Proprietary Rights; (e) Merchant's violation of any Applicable Law; or (f) any other Person's access and/or use of the Services using Merchant's Login Credentials.

SECTION 10. CONFIDENTIALITY

10.1 Obligations. Each Party will (a) use the other's Confidential Information solely for the purposes of performing this Agreement, (b) disclose the other Party's Confidential Information only to those employees and contractors that need to know the same for purposes of performing this Agreement, and (c) inform its employees and contractors with access to the other Party's Confidential Information that such Confidential Information is confidential and proprietary to the other Party and is subject to this Agreement. Each Party will preserve and protect the other Party's Confidential Information and will not divert or misappropriate any Confidential Information of the other Party for its own or any Third Party's benefit. Without limiting the generality of the foregoing, each Party will keep the other Party's Confidential Information confidential and use restrictions at least as stringent as those applied by such Party to protect its own information of similar type.

10.2 Compelled Disclosure. Notwithstanding the provisions set forth in Section 12.1, nothing in this Section 10 will be interpreted or construed to prohibit any disclosure of any Confidential Information required by law; provided, that the recipient of the Confidential Information uses reasonable efforts to provide advance written notice thereof to the other Party (e.g., so as to afford the other Party an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information).

SECTION 11. LIMITATIONS

11.1 Excused Performance. Neither Party will be liable for or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement (other than payment obligations) as a result of any cause or condition beyond such Party's reasonable control.

11.2 Disclaimer of Certain Types of Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL POSaBIT OR ITS PROCESSORS (OR THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AGENTS, AFFILIATES OR REPRESENTATIVES) BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, INABILITY TO USE, OR UNAVAILABILITY OF THE SERVICES. UNDER NO CIRCUMSTANCES WILL POSaBIT BE RESPONSIBLE FOR ANY DAMAGE, LOSS, OR INJURY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR MERCHANT'S POSaBIT ACCOUNT, OR THE INFORMATION CONTAINED THEREIN. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, POSaBIT AND ITS PROCESSORS (AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AGENTS, AFFILIATES AND REPRESENTATIVES) ASSUME NO

LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF THE SERVICES; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM ACCESS TO OR USE OF THE SERVICES; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICES; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH THE SERVICES BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR DATA OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT OR DATA POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICES; AND/OR (VII) MERCHANT CONTENT OR INFORMATION OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY.

11.3 Limitation of Liability. IN NO EVENT SHALL POSaBIT OR ITS PROCESSORS (OR THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AGENTS, AFFILIATES OR REPRESENTATIVES) BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT OF FEES EARNED BY POSaBIT IN CONNECTION WITH MERCHANT'S USE OF THE SERVICES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR LIABILITY.

11.4 Scope. THIS PROVISIONS OF THIS SECTION 11 APPLY WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF POSaBIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

SECTION 12. MISCELLANEOUS

12.1 Reference Account. Merchant consents to POSaBIT's identification of Merchant as a user of the Services and will furnish non-confidential information about Merchant for informational and promotional use by POSaBIT.

12.2 Relationship of Parties. Notwithstanding any other provision in this Agreement, Merchant is not POSaBIT's agent. Rather, POSaBIT and Merchant are independent contractors and there is no relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have any authority to act, or attempt to act, or represent itself, directly or by implication, as an agent of the other or in any manner assume or create, or attempt to assume or create, any obligation on behalf of or in the name of the other, nor will either Party be deemed the agent or employee of the other.

12.3 No Exclusivity. Except as provided in Section 2.6 of this Agreement, this Agreement will not be interpreted or construed to create an exclusive relationship between the Parties and each Party reserves the right to promote, market and solicit sales, licenses and other offerings of its products or services without restriction, either directly or through others, at any time during or after the Term.

12.4 Notices. All notices under this Agreement must be in writing. Notices to POSaBIT must be delivered to the address set forth in the preamble, attention: General Counsel, or sent by email to legal@posabit.com (or such other address as POSaBIT may designate). Notices to Merchant will be directed to the contact email or mailing address provided in Section A of this Agreement, or any updated contact information provided by Merchant in writing. POSaBIT may also provide operational or service-related notices (including updates to Fees or Terms) via the Hosted System, dashboard, or in-application messaging, which will be deemed delivered upon transmission or posting.

12.5 Amendments. POSaBIT may update these Terms and Conditions by providing at least thirty (30) days' advance notice to Merchant. Continued use of the Services after the effective date of such changes constitutes acceptance. If Merchant objects, Merchant may terminate this Agreement before the changes take effect.

12.6 Assignment. Merchant will not assign this Agreement or its rights or obligations under this Agreement without the prior written consent of POSaBIT. For purposes of the foregoing, any change in control of Merchant (e.g., any sale, assignment or transfer of securities entitled to elect a majority of the board of directors of Merchant), in any one or more transactions or events, will be deemed to constitute an assignment of this Agreement requiring POSaBIT's consent. Any assignment by Merchant, with or without POSaBIT's consent, will not relieve Merchant from any of its obligations under this Agreement. Subject to the foregoing restriction on assignments by Merchant, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the parties and their respective successor and assigns.

12.7 Nonwaiver. The failure of either party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provisions, rights, or remedies in that or any other instance; rather, the same will be and remain in full force and effect. Further, no waiver will be valid unless set forth in a written instrument signed by the party to be bound thereby.

12.8 Mandatory Arbitration. Merchant and POSaBIT agree to exclusive and mandatory arbitration of all Disputes. ANY ARBITRATION UNDER THIS Agreement WILL BE ONLY BE ON A INDIVIDUAL BASIS. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED, AND YOU ARE WAIVING YOUR RIGHTS TO HAVE YOUR CASE DECIDED BY A JURY AND TO PARTICIPATE IN A CLASS ACTION AGAINST POSABIT. If any provision of this arbitration Agreement is found unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced (but in no case shall there be a class arbitration). All Disputes shall be resolved finally and exclusively by binding individual arbitration with a single arbitrator administered by the American Arbitration Association (www.adr.org) according to this provision and the applicable arbitration rules. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, fully applies. Any arbitration hearing will occur in Seattle, Washington, or another mutually agreeable location. The arbitrator's award shall be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. For purposes of this arbitration provision, references to Merchant and POSaBIT also include respective Affiliates, agents, employees, predecessors, successors and assigns as well as authorized users of Services. Subject to and without waiver of the arbitration provisions above, Merchant agrees that any judicial proceedings (other than small claims actions in consumer cases) brought by Merchant will be brought in, and Merchant hereby consents to, exclusive jurisdiction and venue in the state and federal courts located in King County, Washington.

12.9 Limitation Period for Disputes. Unless otherwise required by law, an action or proceeding by you relating to any Dispute must commence within one year after the cause of action occurs.

12.10 Governing Law. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington without regard to its choice of law principles to the contrary and applicable federal law (including the Federal Arbitration Act).

12.11 Entire Agreement. This Agreement constitutes the entire agreement, and supersedes any and all prior agreements, between POSaBIT and Merchant with regard to the subject matter hereof. No amendment of any of the provisions of this Agreement will be valid unless set forth in a written instrument signed by both parties. POSaBIT will not be bound by, and specifically objects to, any term, condition or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which has been proffered by Merchant in any purchase order, confirmation, correspondence or otherwise, unless POSaBIT specifically agrees to such provision in writing.

APPENDIX A

Definitions

“**Affiliate**” means any Person that controls, is controlled by or is under common control with a Party, where “control” means the direct or indirect ownership or control of more than 50% of the voting interests or the power (through contract or otherwise) to direct the management or affairs of a Person.

“**Agreement**” means this POS Merchant Agreement.

“**Applicable Law**” means any and all federal, state and local laws, treaties, rules, regulations, regulatory guidance, determinations of (or agreements with) an arbitrator or governmental agency or authority and mandatory written direction from (or agreements with) any arbitrator or governmental agency or authority applicable to any of the Parties by law or made applicable to any Party as specifically provided for in this Agreement, as the same may be amended and in effect from time to time.

“**Authorized Employee**” means any employee or independent contractor engaged by Merchant who is authorized by Merchant to access or use any Services.

“**Authorized Location**” means a store owned and operated by Merchant at the location listed in Section A and, where applicable, listed on Appendix B.

“**Cardholder**” means a Person that presents a payment card at an Authorized Location.

“**Confidential Information**” means any confidential or proprietary information of the discloser, whether of a technical, business or other nature (including, but not limited to, Proprietary Materials, the terms of this Agreement, trade secrets, know-how and information relating to the technology, customers, business plans, promotional and marketing activities, finances and other business affairs of the discloser) that is disclosed to or obtained by the recipient and that the recipient knows or has reason to know is confidential, proprietary or trade secret information of discloser. Confidential Information also includes any information that has been made available to discloser by third parties that discloser is obligated to keep confidential. Confidential Information does not include any information that (a) was known to the recipient before receiving the same from the discloser in connection with this Agreement; (b) is independently developed by the recipient without reliance on any Confidential Information of the discloser; (c) is acquired by the recipient from another source without restriction as to use or disclosure; or (d) is or becomes generally known to the public through no fault or action of the recipient.

“**Customer**” means a Person who purchases Product from Merchant at an Authorized Location and pays for all or any portion of the Product.

“**Deletion Certificate**” means a written certification signed by a senior officer of Merchant certifying as to the destruction of certain Confidential Information and Proprietary Materials in the possession or control of Merchant.

“**Dispute**” means any legal claim or controversy between Merchant and POSaBIT related to this Agreement, including any claims that arose before this Agreement and that may arise after termination of this Agreement.

“**Early Termination Fee**” has the meaning set forth in Section 8.3 of the Agreement.

“**Effective Date**” is the date set forth in the opening paragraph of this Agreement.

“**Feedback**” means information and feedback (including, without limitation, questions, comments, suggestions, or the like provided by Merchant or Merchant’s Customer) regarding the Products or the use or installation of the Products.

“**Fees**” means the Implementation Fee, Monthly Fee, and any additional fees charged by POSaBIT related to the Services.

“**Governmental Authority**” means any federal, state, local or other governmental authority or regulatory body, or a competent tax authority.

“**Hosted System**” means the hardware and software system operated by POSaBIT and made available to customers using the Services

“**Implementation Fee**” has the meaning set forth in Section 4.1.1.

“**Improvement**” means any modification, derivative work, enhancement, upgrade, update, new version, translation, additional feature, additional function or other improvement.

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



“**Login Credentials**” means the username, user ID, password, passcode or other identifier or security feature created by or provided to Merchant for purposes of identifying Merchant and providing access to Merchant’s POSaBIT Account on the Hosted System.

“**Merchant**” has the meaning set forth in the opening paragraph of this Agreement.

“**Monthly Fee**” has the meaning set forth in Section 4.1.2 of the Agreement.

“**Party**” or “**Parties**” means POSaBIT and/or Merchant.

“**Person**” means any individual, corporation, limited liability company, partnership, trust, estate, association, governmental authority or other entity.

“**POSaBIT**” has the meaning set forth in the opening paragraph of this Agreement.

“**POSaBIT Account**” means the account that Merchant creates and maintains with POSaBIT using the Hosted System through which Merchant is able to access and use the Hosted System.

“**POSaBIT Trademarks**” means the trademarks, trade names, logos and product names that POSaBIT uses to identify the Services. POSaBIT may add, remove, change, revise, or update the POSaBIT Trademarks at its sole discretion.

“**Product**” means any goods or products that Merchant lawfully makes available for purchase at Authorized Locations.

“**Proprietary Materials**” has the meaning set forth in Section 7.1 of the Agreement.

“**Proprietary Rights**” means all rights in and to patents, patent applications, copyrights, trade secrets, trademarks, trademark applications, moral rights, mask works and any other proprietary or intellectual property right of any kind under the laws of any governmental authority, domestic or foreign.

“**Provided Device**” or “**Provided Terminal**” means any hardware provided by POSaBIT for use in connection with the Services, including point of sale terminals, monitors, and all-in-one computers.

“**Provided Printer**” means a printer that is provided to Merchant by POSaBIT for use in connection with the Services.

“**Provided Scanner**” means a scanner that is provided to Merchant by POSaBIT for use in connection with the Services.

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

“**Services**” means all software, hardware, devices, equipment, products, support services, websites, user interfaces, features and functions provided by POSaBIT to Merchant.

“**Specifications**” means the description of the features, functions and other technical characteristics of the Services set forth in written documentation provided by POSaBIT to Merchant (excluding drafts or other documentation that has otherwise not been approved by POSaBIT for general publication).

“**Support and Training Services**” means the services described in [Appendix C](#). Support and Training Services are part of the Services.

“**System Administrator**” means one or more authorized users designated by Merchant to access and manage the Services on its behalf, and whose action are deemed authorized and binding upon Merchant.

“**Taxes**” has the meaning set forth in Section 4.3 of the Agreement.

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

“**Update**” means any update, upgrade, bug fix, patch, error correction, new version, release or other modification.