**POINT OF SALE SYSTEM LICENSE AGREEMENT**

 THIS AGREEMENT, made this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, between [RESELLER], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ corporation, whose principal place of business is at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ (hereinafter "RESELLER"), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ corporation, located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter "Licensee").

 WHEREAS, RESELLER has developed and maintains certain Point-of-Sale Systems, including Hardware, Software, reference manuals and other materials, all more specifically detailed herein and referred to hereinafter as the "Products"; and

 WHEREAS, Licensee desires to license said System for its sole use.

 NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions hereinafter set forth, RESELLER and Licensee agree as follows:

1. Definitions.

 (a) "Software" means all computer program(s) identified in Exhibit A.

 (b) “Documentation” means material related to the Software provided to

 a Licensee.

 (c) “Hardware” means that equipment purchased or rented as identified

 in Exhibit A.

 (d) “Hardware Replacement Program” means an optional program

 whereby Hardware is replaced or upgraded as deemed necessary in RESELLER’

 sole discretion.

 (e) “System” means the Point-of Sale configuration designed and

 maintained for Licensee.

 2. Limited Use License. In consideration of Licensee's payment of the license fee to RESELLER, RESELLER grants to Licensee and Licensee accepts a non-transferable, non-exclusive limited use license to use the Software on the RESELLER equipment identified herein under the terms and conditions stated herein. Licensee may: (a) use the Software only on the Hardware or network designated in Exhibit A; (b) if any other RESELLER equipment is provided pursuant to this License Agreement the Agreement will be amended and appropriate fees paid; and (c) make two copies of the Software in any machine-readable form for operational or archival backup use, but only on the designated CPU or network. Licensee shall: (a) maintain records of the number and location of any such copies, in whole or in part, of the Software and upon RESELLER request shall make such records available to RESELLER; (b) reproduce and include all copyright notices (including each copyright notice applicable to the third-party software products merged and included in the Software on any copy; and (c) not reverse engineer, disassemble, decompile, reverse translate, or in any manner decode the Software in order to derive any source code form of the Software. Licensee shall not rent, provide or lease the Software to others.

THE SOFTWARE, OR ANY COPY, MODIFICATION OR MERGED PORTION, MAY NOT BE USED, COPIED, MODIFIED OR TRANSFERRED, IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PROVIDED HEREIN. IF POSSESSION OF THE SOFTWARE, OR ANY COPY, MODIFICATION, OR MERGED PORTION THEREOF IS TRANSFERRED TO ANY OTHER PARTY, THIS LICENSE AGREEMENT IS AUTOMATICALLY TERMINATED, UNLESS OTHERWISE AGREED.

3. Term. The term of this Agreement commences upon execution hereof and shall continue for a period of \_\_\_\_\_\_\_\_\_ (\_\_\_\_) [months/years]. This Agreement shall auto renew for a period of \_\_\_\_\_\_\_\_ (\_\_) [months/years] at the end of any term unless the terminating party provides sixty (60) days’ prior written notice to the non-terminating party of its intent to terminate the Agreement prior to the end of the then current term. This License may not be terminated other than as provided herein. Licensee is responsible for all payments contracted, none of which are refundable. RESELLER may terminate this Agreement upon notice to Licensee, at its address stated herein, if Licensee fails to perform or comply with any terms or conditions of this Agreement, or if Licensee is dissolved or becomes bankrupt. Licensee agrees to return the System, Equipment, Software and Documentation together with all copies, modifications, and merged portions of the Software in any form upon the termination of this License.

4. Protection and Security of the System. Licensee agrees: (a) that the System configuration and Software is confidential, contains trade secrets and information that derive substantial independent economic value from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; that the Software is proprietary to RESELLER or designate third party; and that the Software is protected by copyrights owned by developer under the Copyright Act of the United States; (b) that developer owns the original and all copies of the Software; (c) to take all steps to safeguard and to prevent the unauthorized or inadvertent disclosure or use of any part of the Software in any form to any third-party; and (d) not to copy or reproduce the Software or any part thereof, except as permitted hereunder. The obligations under items (c) and (d) shall survive the termination of this Agreement.

5. Limited Warranties. RESELLER does not warrant that the Software will meet Licensee's requirements or will operate in the combination Licensee selects for use, or that the operation of the Software will be uninterrupted or error-free. RESELLER warrants that the System and Software will perform substantially in the manner specified in the Documentation furnished with the System, but only if the System is used with all the features and configuration of components specified in the Documentation. This warranty will not be changed by the rendering of technical, programming, other advice, or service by RESELLER or its agents. If modifications or changes are made to the System or Software other than as directed or approved by RESELLER in writing, then this warranty is void. Licensee's sole and exclusive remedy for this warranty by RESELLER shall be the repair or replacement of the System or Software so that it operates in substantial accordance with the Documentation.

 THE FOREGOING WARRANTIES OF RESELLER DO NOT EXTEND TO ANY SYSTEM OR SOFTWARE WHICH HAS BEEN DAMAGED AS A RESULT OF ACCIDENT, MISUSE, ABUSE, OR AS A RESULT OF SERVICE OR MODIFICATION BY ANYONE OTHER THAN RESELLER, OR ITS AGENT. EXCEPT AS EXPRESSLY SET FORTH ABOVE, NO OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, ARE MADE WITH RESPECT TO THE SOFTWARE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND RESELLER EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATED HEREIN. LICENSEE ASSUMES THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE. THIS WARRANTY GIVES LICENSEE SPECIFIC LEGAL RIGHTS, AND LICENSEE MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. LICENSEE'S SOLE REMEDIES AND THE ENTIRE LIABILITY OF RESELLER IS AS SET FORTH ABOVE. IN NO EVENT WILL RESELLER BE LIABLE TO LICENSEE OR ANY OTHER PERSON FOR ANY DAMAGES, CAUSES OF ACTION ARISING OUT OF THIS AGREEMENT, OR THE PERFORMANCE OF THIS AGREEMENT, OR ANY ACTION RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, EXPENSES, LOST PROFITS, LOST SAVINGS OR OTHER DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SYSTEM OR SOFTWARE.

6. Licensee Maintenance Efforts. Licensee shall maintain the Hardware in good operating condition, repair and appearance, and protect the same from deterioration other than normal wear and tear; shall use the Hardware and Software in the regular course of it’s business, within it’s normal capacity, without abuse, and shall comply with all laws, regulations, directives, requirements and rules with respect to the use, maintenance and operation of the Hardware and Software; shall use the Hardware and Software solely for business purposes, shall not make any modification, alteration or addition to the Hardware and Software, without the written consent of RESELLER, shall not at any time affix, and shall not remove the Hardware and Software from the Licensee location without written consent of the RESELLER, which shall not be unreasonably withheld.

7. Merchant Security. Licensee shall be responsible to (a) have and maintain in place virus protection, security, and firewall protection for all its systems, data, and overall network access, and (b) all risk of loss, theft, damage, destruction or breach of the Hardware and Software from any cause whatsoever after taking possession of the Hardware and Software. Licensee acknowledges that security and access to any Hardware and Software located on its premises is solely the Licensee’s responsibility and agrees to notify RESELLER immediately if Hardware or Software is lost, destroyed, stolen, taken by any other person, or breached. RESELLER DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT, AFTER THE INITIAL INSTALLATION OF THE HARDWARE AND SOFTWARE CONTAINED THEREIN, THAT THE HARDWARE, SOFTWARE CONTAINED THEREIN OR CUSTOMERS DATA WILL REMAIN VIRUS-FREE. MERCHANT WAIVES ANY CLAIMS HEREUNDER AGAINST RESELLER TO THE EXTENT ARISING FROM LICENSEE’S FIALURE TO HAVE OR MAINTAIN CURRENT VIRUS AND SECURITY PROTECTION, OR TO THE EXTENT ARISING AS A RESULT OF A FAILURE OR BREACH OF CUSTOMERS SECURITY FOR ITS SYSTEMS OR DATA, OR AS A RESULT OF ANY UNAUTORIZED ACCCESS TO LICENSEE’S HARDWARE OR SOFTWARE.

8. Exclusive Credit Card Processing. Licensee agrees that during the term of this Agreement, and any renewal term that it shall enter into a Merchant Transaction Processing Agreement and exclusively process credit/debit/gift/loyalty card transactions with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Licensee acknowledges that the costs and benefits contained herein are determined upon the Licensee’s voluntary agreement to utilize these processing services. Failure to do so shall result in RESELLER’s right to immediately terminate this Agreement as set forth in Section 14, and forfeiture of the Hardware and Software without notice or opportunity to cure. Such termination of the Agreement shall not relieve Licensee of its obligation to pay Fees that have accrued as of the termination date and shall result in an Early Termination Fee as set forth in Section 14.4.

9. Equipment Return.

 Licensee agrees that:

 (a) upon termination of the Agreement that it shall return all Hardware and Software to RESELLER within fifteen (15) days.

 (b) upon receiving replacement Hardware that it shall return any malfunctioning Hardware which it has requested being replaced to RESELLER within fifteen (15) days of receipt of the substitute Hardware.

 (c) to the extent permitted by applicable law, without demand or legal process, RESELLER, its agents, affiliate or assigns, may enter into the premises where the Hardware and Software may be found and take possession of and remove the Hardware and Software, without liability of such retaking.

10. Adjustments. RESELLER may adjust the monthly License Fee in Exhibit A upon 30 day written notice.

11. Taxes. Licensee shall pay (or reimburse RESELLER), in addition to the charges for the services specified herein as a separate item, all taxes (exclusive of RESELLER net income taxes), however designated, or amounts legally levied in lieu thereof, based on or measured by the charges set forth in this Agreement or on this Agreement, or on the services rendered hereunder, now or hereunder imposed under the authority of any federal, state, or local taxing jurisdiction.

12. Shipping. Unless otherwise stated, all Hardware and Software shall be shipped via UPS Ground Shipping (“Courier”). Licensee authorizes RESELLER to debit the amount for shipping at the time the unit ships. RESELLER shall have no liability for failure of Hardware and Software to reach its destination in a timely manner once it has delivered the Hardware or Software to the Courier.

13. Insurance. During the term of this Agreement, Licensee agrees to maintain, at Licensee’s expense “Special Form” property insurance protecting the Hardware and Software for its replacement value, naming RESELLER as a loss payee on public liability insurance, in amounts acceptable to RESELLER, naming RESELLER as an additional insured. Licensee must provide RESELLER satisfactory written evidence of the insurance within thirty (30) days of the commencement date of this Agreement or any subsequent written request. If Licensee does not do so, RESELLER may obtain insurance from an insurer of its choosing in such forms and amounts as RESELLER deems reasonable to protect its interests. Such insurance covers the Hardware, Software and RESELLER; it does not name the Licensee as the insured. Licensee agrees to pay RESELLER periodic charges for insurance that include: a premium that may be higher that if the Licensee maintained its own insurance separately, a finance charge of 1.5% per month on any premium advanced made by RESELLER or its agents, affiliates or assigns, and billing and processing fees; each of which may generate a profit for RESELLER, its agents, affiliates or assigns. Unless Licensee provides satisfactory evidence of insurance by the due date set forth herein, RESELLER shall pay such insurance be debiting Licensee’s account under the withdrawal provision in this Agreement. RESELLER shall discontinue billing insurance charges upon receipt of satisfactory evidence of insurance. Licensee agrees to arbitrate any dispute with RESELLER or RESELLER’s agents, affiliates or assigns regarding insurance charges under the Commercial Rules of the American Arbitration Association; provided however, such agreement does not authorize class arbitration.

14. Termination. This Agreement may be terminated in accordance with the following:

14.1 Licensee’s default on payments. In the event that Licensee defaults on any payment due under this Agreement, RESELLER shall be entitled to either (a) immediately terminate this Agreement, or (b) direct \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to withhold Merchant processing funds in the amount which it is in default for which RESELLER may immediately apply to payment of the fee set forth in Exhibit A.

14.2 Breach. In the event that Licensee commits a breach of any of its obligations under this Agreement, RESELLER may terminate this Agreement or exercise its rights as set forth in this Section.

14.3 Survival of Licensee’s Obligations. Licensee’s obligation to pay all charges which shall have accrued hereunder prior to termination of this Agreement shall survive termination, irrespective of the reason.

14.4 Early Termination Fee. If this Agreement is terminated either during the Initial Term or any renewal term for any reason set forth in this Section, Licensee agrees to pay an early termination fee equal to the total monthly service fee as set forth in Exhibit A multiplied by the number of months remaining on the then-current term, in addition to all other amounts that the Licensee owes. The parties agree that the precise damages resulting from an early termination by Licensee are difficult to ascertain, and the early termination fee is a reasonable estimate of anticipated actual damages and not a penalty, but rather is reasonable in light of the financial harm caused by Licensee’s early termination. Licensee expressly authorizes RESELLER to debit this fee from its account which may be done within thirty (30) days of termination.

15. Billing, Payments and Credit Authorization. (a) Licensee grants RESELLER, its affiliates, successors, and assigns, Automated Clearing House (“ACH”) Authorization to credit and debit its demand deposit account and permission to make a credit inquiry in order to obtain a consumer credit report; (b) RESELLER may share such information with third parties so long as such third party is under no less of an obligation to maintain the security of this information as RESELLER.

16. License and Other Fees. In consideration of the License granted herein, Licensee agrees to pay RESELLER the License fee stated in Exhibit A. Training, education, or installation of the System and Software are not included in the License fee, and will be provided at the price stated.

17. Title and Ownership. The System Licensed herein shall at all time remain the property and be owned by the RESELLER. In the event Licensee shall default under this License, the RESELLER shall have the right to retrieve its system, including all equipment and software, and Licensee shall not interfere or hinder the prompt removal of the System. Removal of the System shall not waive any other rights that RESELLER may have under the law or herein.

18. General. This Agreement shall be governed by and interpreted in accordance with laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, irrespective of the choice of law provisions. If any provision of this Agreement is declared illegal, null or void or contrary to public policy, it shall be deleted and shall not affect the validity of any other term or condition of this Agreement. Licensee may not Sublicense, assign rights or delegate duties hereunder, or transfer the System, License or the Software, except as expressly provided in this Agreement.

 LICENSEE AGREES THAT THE TERMS HEREOF CONSTITUTE ITS COMPLETE AND EXCLUSIVE AGREEMENT WITH RESELLER, AND SUPERSEDE ANY PROPOSAL OR PRIOR ORAL OR WRITTEN AGREEMENT, AND ANY OTHER COMMUNICATIONS BETWEEN RESELLER, LICENSEE RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

**RESELLER LICENSEE**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Name/Title Name/Title**

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**Signature Signature**

**UNCONDITIONAL GURRANTY**

The undersigned, jointly and severally if more than one, unconditionally guarantee(s) that the Licensee will timely perform all obligations under the Agreement. The undersigned also waive(s) any notification if the Licensee is in default and consent(s) to any extensions or modifications granted to the Licensee. In the event of default, the undersigned will immediately pay all sums due under the terms of the Agreement without requiring RESELLER or RESELLER’s assignee, to proceed against Licensee or any other party or exercise any rights in the System. The undersigned, as to this guaranty, agree(s) to the designated forum and consent(s) to personal jurisdiction, venue, and choice of law as stated in the Agreement, agree(s) to pay all costs and expenses, including attorney fees, incurred by RESELLER or RESELLER’s assignee related to this guaranty and the Agreement, waive(s) a jury trial and transfer of venue, and authorize(s) obtaining credit reports.

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**Signature Signature**

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**Print Name Print Name**

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**Witness Signature Witness Signature**

**EXHIBIT A**

Software: Point of Sale Software as outlined in Quote Number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Hardware: Hardware as outlined in Quote Number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Hardware Replacement Program: Hardware will be replaced or upgraded as deemed necessary in RESELLER’s sole discretion.

License Fee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_) Months, payable Monthly in Advance at the rate of

$ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ per month.

Training: Training plan as outlined in Quote Number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_