



Harbortouch Point of Sale System Service Agreement Elite™ POS Exhibit A

NEW ACCOUNT EXISTING ACCOUNT EXISTING MID: _____ OWNERSHIP CHANGE OLD MID: _____

MERCHANT DBA NAME ("Merchant"):		AGENT OFFICE CODE:
MERCHANT LEGAL NAME:		
MERCHANT ADDRESS:		
CITY:	STATE:	ZIP:
MERCHANT PHONE:	E-MAIL ADDRESS:	

ENROLLMENT OPTIONS

For the Service Fees set forth below and in accordance with the terms and conditions set forth in the Service Agreement the Merchant shall receive the following service:

I. BASE PACKAGE



- 1 HARBORTOUCH ELITE POS SYSTEM
- 1 CASH DRAWER
- 1 RECEIPT PRINTER
- 1 BAR CODE READER (RETAIL MERCHANTS ONLY)
- 1 INTEGRATED CUSTOMER DISPLAY (STANDARD FOR RETAIL MERCHANTS, AVAILABLE FOR PURCHASE FOR HOSPITALITY/QSR MERCHANTS)
- 10 SERVER CARDS (HOSPITALITY/QSR MERCHANTS ONLY, 10 CARDS PER MID)
- 1 KEYBOARD AND 1 MOUSE

HARBORTOUCH ELITE POS - 3 YEAR:
NUMBER OF SYSTEMS _____ x \$69.00/month TOTAL MONTHLY SERVICE FEE: \$ _____ /month plus local, state, and federal taxes

Check here if you DO NOT need a cash drawer with some of the systems ordered. Number of cash drawers needed: _____

Term of Service Agreement is thirty-six (36) months. See Terms and Conditions for further details.

II. OPTIONAL ADD-ONS ("Add-Ons")

For an additional monthly per-item service charge Merchant shall be entitled to service for the Add-Ons as set forth in the Agreement.

PRODUCT/SERVICE	QUANTITY	MONTHLY COST	TOTAL COST
Remote Printer - Thermal (Hospitality/QSR & Delivery only)		\$12.00	\$
Remote Printer - Dot Matrix (Hospitality/QSR & Delivery only)		\$16.00	\$
Advance Wiring Package (per cable drop)		\$14.00	\$
CAS PD-II Digital Scale (reads in pounds and/or ounces. Hospitality and Retail only)		\$28.00	\$
Kitchen Video System (includes screen. Hospitality only)		\$43.00	\$
Caller ID - 2 Line/4 Line		\$14.00/\$20.00	\$
TOTAL OPTIONAL ADD-ONS:			\$ _____ /month
TOTAL MONTHLY SERVICE FEE FOR SECTION 1 + SECTION II (PLUS LOCAL, STATE & FEDERAL TAXES)			\$ _____ /month

III. OPTIONAL ACCESSORY PURCHASES

These Items are Purchased by Merchant before or after initial sale and are NOT part of the Service Agreement. All products received "as is, whereis".

PRODUCT/SERVICE	QUANTITY	PRICE	TOTAL COST
NFC Reader (Hospitality and Retail only)		\$89.00	\$
Remote Printer - Thermal (Hospitality/QSR & Delivery only)		\$165.00	\$
Remote Printer - Dot Matrix (Hospitality/QSR & Delivery only)		\$260.00	\$
Debit Pin-Pad (Retail merchants only)		\$89.00	\$
Cash Till		\$25.00	\$
Additional Cash Drawer		\$129.00	\$
Integrated Customer Display (Hospitality/QSR only. Comes standard for Retail merchants.)		\$69.00	\$
25 Server Cards (Hospitality/QSR only)		\$49.00	\$
TOTAL OPTIONAL ACCESSORIES (PLUS LOCAL, STATE & FEDERAL TAXES)			\$

IV: SOFTWARE SUPPORT FEE

Applies per Elite system. This fee can be billed on a quarterly or monthly basis.

SELECT AN OPTION: \$60.00 BILLED QUARTERLY \$20.00 BILLED MONTHLY

This is a required Fee. If no option is selected, monthly billing will be chosen by default. See Service Agreement Terms and Merchant Transaction Processing Agreement Terms and Conditions for complete details.

RAPID RESPONSE SUPPORT: \$ _____ /QUARTER RAPID RESPONSE SUPPORT: \$ _____ /MONTH

Can only be offered by Certified Harbortouch Resellers. Rapid Response billing schedule must match Software Support Fee billing (monthly vs. quarterly).

SHIPPING METHOD: GROUND 2ND DAY NEXT DAY AIR SEE SERVICE AGREEMENT TERMS FOR DETAILS

PRINCIPAL #1 INITIALS _____ PRINCIPAL #2 INITIALS _____

OWNERS OR OFFICERS					
PRINCIPAL #1		SOCIAL SECURITY NUMBER		PRINCIPAL #2	
RESIDENCE ADDRESS		RESIDENCE ADDRESS		RESIDENCE ADDRESS	
CITY	STATE	ZIP	CITY	STATE	ZIP

Cable Drops: Installation of the Equipment shall include 1 complimentary cable run to a POS System located no more than 10 feet from the wall/cable connection and without the need to install any cable jacks into the wall ("**Cable Drop**"). MERCHANT AUTHORIZES HARBORTOUCH TO PERFORM ADDITIONAL CABLE DROPS IN EXCESS OF THE COMPLIMENTARY CABLE DROP WHICH HARBORTOUCH DEEMS NECESSARY TO PERFORM THE INSTALLATION. MERCHANT SHALL BE BILLED \$249 DOLLARS FOR EACH ADDITIONAL CABLE DROP AFTER THE COMPLIMENTARY CABLE DROP. MERCHANT SHALL BE DEBITED THE AMOUNT FOR ADDITIONAL INSTALLATION AT THE TIME OF THE NEXT BILLING.

Personal Guaranty: This general, absolute, and unconditional Guaranty ("Guaranty") by the undersigned (collectively "Guarantor" or "my" or "I" or "me") is for the benefit of Harbortouch Payments, LLC and its affiliates and subsidiaries, including but not limited to Harbortouch Financial, LLC (collectively "Harbortouch"). For value received, and in consideration for the mutual undertakings contained in the Agreements, exhibits, and all other related agreements entered into between Merchant and Harbortouch or its parents, affiliates, successors, and assigns, I absolutely and unconditionally guarantee the full performance of all Merchant's obligations to Harbortouch, together with all costs, expenses, and attorneys' fees incurred by Harbortouch, its parents, affiliates, successors, or assigns, in connection with any action, inactions, or defaults of Merchant with respect to this Agreement or any other Agreement currently in effect or in the future entered into between Merchant or its principals and Harbortouch, its parents, affiliates, successors, or assigns. I waive any right to require Harbortouch, its parents, affiliates, successors, or assigns, to proceed against other entities or Merchant. There are no conditions attached to the enforcement of this Guaranty. I authorize, Harbortouch, its parents, affiliates or assigns to make from time to time any personal credit or other inquiries and agree to provide, at Harbortouch's request, financial statements and/or tax returns. I agree that this Guaranty shall be governed and construed in accordance with the State of Pennsylvania, and that the courts of Pennsylvania shall have and be vested with personal jurisdiction. The termination of this Agreement or Guaranty shall not release me from liability with respect to any obligations incurred before the effective date of termination. No termination of this Guaranty shall be effected by any change in my legal status or any change in the relationship between Merchant and me. This Guaranty shall bind and inure to the benefit of the personal representatives, parents, heirs, administrators, successors and assigns of Guarantor and Harbortouch.

AGREED AND ACCEPTED:

_____ **PRINT NAME**

PRINCIPAL 1 SIGNATURE

_____ **PRINT NAME**

PRINCIPAL 2 SIGNATURE

ACH Authorization: The fees and charges as specified in POS Exhibit A and the terms and conditions shall be debited from Merchant's account upon the execution of this Service Agreement and then on a monthly basis thereafter. All other charges payable hereunder shall be debited during the month in which they were incurred. Authorized Merchant Representative's signature below authorizes Harbortouch Payments, LLC ("Harbortouch") its affiliates, subsidiaries, designated assignees, or third party providers, including but not limited to Harbortouch Financial, LLC, to initiate ACH transfer entries to credit and/or debit the account identified in the voided check provided to Harbortouch for the fees and charges incurred under the Service Agreement. This authorization shall remain in effect unless and until Harbortouch receives written notification from Merchant that this authorization has been terminated in such time and manner to allow Harbortouch to act.

Credit Inquiry Authorization: Authorization is hereby granted by the Merchant representative who has signed below to Harbortouch Payments, LLC ("Harbortouch") to obtain a consumer credit report through a credit reporting agency chosen by Harbortouch. Authorized Merchant Representative understands and agrees that Harbortouch intends to use the consumer credit report for the purposes of evaluating my financial readiness to enter into this Service Agreement. Authorized Merchant Representative understands that this credit report will be retained on file at the Harbortouch office for use only by Harbortouch staff. This information will not be disclosed to anyone by Harbortouch without written consent unless required by law. Authorized Merchant Representatives signature below authorizes the release to the credit reporting agency of financial information which I have supplied to Harbortouch in connection with such an evaluation. Authorization is further granted to the credit reporting agency to use photostatic reproduction of this form if required to obtain any information necessary to complete my consumer credit report.

SIGNING BELOW GRANTS HARBORTOUCH AUTHORIZATION TO DEBIT THE MERCHANT ACCOUNT AS SET FORTH HEREIN AND GRANTS HARBORTOUCH PERMISSION TO THE RELEASE OF FINANCIAL INFORMATION TO THE CREDIT REPORTING AGENCY AND GRANTS PERMISSION FOR HARBORTOUCH TO OBTAIN A COPY OF MY CREDIT REPORT.

PLEASE READ THIS SERVICE AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION, INCLUDING YOUR REQUIRED USE OF HARBORTOUCH'S TRANSACTION PROCESSING SERVICES. THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO A MERCHANT IN THE EVENT OF A DISPUTE (PLEASE SEE SECTION 11 (e) FOR FURTHER DETAILS).

BY THEIR EXECUTION BELOW, THE UNDERSIGNED AGREES TO ABIDE BY THE SERVICE AGREEMENT. THE SERVICE AGREEMENT CONSISTS OF THE POS EXHIBIT A, THE POS ACCOUNT SETUP FORM, AND THE TERMS AND CONDITIONS. MERCHANT ACKNOWLEDGES RECEIPT OF SERVICE AGREEMENT TERMS AND CONDITIONS. THE SERVICE AGREEMENT REQUIRES THE USE OF HARBORTOUCH'S TRANSACTION PROCESSING SERVICES UNDER A SEPARATE MERCHANT TRANSACTION PROCESSING AGREEMENT. MERCHANT WARRANTS THAT THE INFORMATION PROVIDED TO HARBORTOUCH IS COMPLETE AND ACCURATE.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORIZED REPRESENTATIVES EFFECTIVE ON THE DATE SIGNED OR APPROVED BY HARBORTOUCH.

AGREED AND ACCEPTED: MERCHANT LEGAL NAME _____

_____ **PRINT NAME**

PRINCIPAL 1 SIGNATURE

_____ **PRINT NAME**

PRINCIPAL 2 SIGNATURE

**POS SYSTEM SERVICE AGREEMENT
TERMS AND CONDITIONS**

This POS System Service Agreement (“**Service Agreement**”) by and between Harbortouch and Merchant consists of the POS Exhibit A, the POS Account Setup Form, and these Terms and Conditions all of which are incorporated herein by reference.

PLEASE READ THIS SERVICE AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION, INCLUDING YOUR REQUIRED USE OF HARBORTOUCH'S TRANSACTION PROCESSING SERVICES. THIS SERVICE AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO A MERCHANT IN THE EVENT OF A DISPUTE (PLEASE SEE SECTION 11 (e) FOR FURTHER DETAILS).

1. **DEFINITIONS.** (a) “**Effective Date**” means the date Harbortouch approves Merchant's signed POS Exhibit A. (b) “**Equipment**” means the Elite™ POS or Echo™ POS System and related peripherals selected on the POS Exhibit A. (c) “**Install Date**” means the date on which the Equipment is installed at the Merchant Location or the first day following the first full calendar month after the Equipment is shipped to the Merchant, whichever occurs first. (d) “**Merchant**” means the name of the business listed on POS Exhibit A. (e) “**Merchant Location**” means the address of the Merchant listed on POS Exhibit A. (f) “**Processing Services**” means Harbortouch's credit/debit/gift card processing services as provided for under the Harbortouch Merchant Transaction Processing Agreement. (g) “**Software**” shall mean the software programs installed on or made available through use of the Equipment, including, but not limited to, any application programming interfaces, upgrades, enhancements and/or modifications made by Harbortouch. (h) “**Harbortouch**” means Harbortouch Financial, LLC a wholly-owned subsidiary of Harbortouch Payments, LLC.

2. **EXCLUSIVE PROCESSING REQUIREMENT**

- a. **Processing Services.** Merchant's use of the Equipment requires use of the Processing Services at all times. Merchant agrees not to use third-party processing services. By entering into this Service Agreement, Merchant also agrees to enter into a Harbortouch Merchant Transaction Processing Agreement. The Processing Agreement consists of the Merchant Application and the Terms and Conditions, together with its addenda, attachments and schedules.
- b. **Failure to Process.** If at any time after the Install Date Merchant stops using the Processing Services, in whole or in part, then Harbortouch shall charge Merchant \$75.00 per Equipment terminal for each 30 calendar day period that the Processing Services are not used (“**Inactivity Fee**”). Notwithstanding the foregoing, Harbortouch reserves the right to either terminate this Service Agreement or suspend Merchant's access to the Equipment and/or Software for Merchant's non-use of the Processing Services.

3. **TERM COMMITMENT**

- a. **Term.** This Service Agreement begins on the Effective Date and shall continue for three (3) years (“**Initial Term**”). At the expiration of the Initial Term, this Service Agreement shall automatically renew for additional three (3) year periods (“**Renewal Term**”) unless Merchant provides Harbortouch with written notice of Merchant's intent not to renew the Service Agreement at least 30 calendar days prior to the expiration of the Initial Term or any Renewal Term.
- b. **Term Commitment.** Merchant understands that it is receiving favorably priced equipment and software from Harbortouch in exchange for Merchant's term commitment. Merchant may terminate this Service Agreement subject to the following conditions:
 - (i). *Elite™ POS Systems Only.* Merchant may terminate this Service Agreement for any reason prior to the Install Date. Merchant will pay a restocking fee of \$250.00 per ordered Equipment terminal (“**Restocking Fee**”). All Equipment must be returned to Harbortouch, at Merchant's expense, within 30-calendar days.
 - (ii). Merchant may terminate this Service Agreement for any reason after the Install Date. Merchant will pay an early termination fee equal to the Total Monthly Service Fee multiplied by the number of months remaining on the Initial Term and/or a Renewal Term (“**ETF**”).
 - (iii). *Echo™ POS System Only.* The ETF shall not apply if the Merchant terminates the Service Agreement within the thirty (30) calendar day period following the date the Equipment is shipped to the Merchant.
 - (iv). Harbortouch may debit the Restocking Fee and/or the ETF from Merchant's bank account on file with Harbortouch within 30-calendar days of the date this Service Agreement is terminated. Merchant is responsible for all additional fees, charges, taxes and other amounts incurred under the Service Agreement.
- c. **Harbortouch's Termination Rights.** Harbortouch may, without notice, suspend Merchant's access to the Equipment and Software and/or terminate this Service Agreement for any of the following reasons: (i) breach of this Service Agreement; (ii) unlawful use of the Equipment, Software and/or Processing Services; (iii) unauthorized modification of the Equipment and/or Software or installation of unauthorized third-party software; (iv) failure and/or refusal to pay fees on time; (v) breach of the Merchant Transaction Processing Agreement or (vi) insolvency or bankruptcy. Harbortouch may, in its sole discretion, withhold Merchant's funds derived from use of the Processing Services in order to satisfy all fees, charges and other amounts incurred and owed under this Service Agreement.

4. **FEES AND PAYMENT**

- a. **Total Monthly Service Fees.** Merchant shall pay the Total Monthly Service Fee, as listed on the POS Exhibit A upon the first business day of each month starting on the Install Date. Merchant permits Harbortouch to re-debit Merchant's bank account should any attempt to collect fees reject, for any reason.
- b. **Shipping Fees.** Harbortouch will ship all Equipment via nationally recognized courier service (i.e. UPS). Merchant is responsible for all shipping costs and authorizes Harbortouch to debit Merchant's account. Harbortouch shall have no liability for failure of Equipment to reach its destination in a timely manner once it has delivered the Equipment to courier. The current shipping fees are:

		Ground	2nd Day Air	Next Day Air
Contiguous U.S.	Per Base Package	\$25.00	\$51.50	\$76.95
	Per Additional Accessory	\$11.00	\$26.00	\$39.00
Alaska & Hawaii	Per Base Package	\$115.00	\$139.50	N/A
	Per Additional Accessory	\$57.00	\$75.00	N/A

- c. **Software Support Fee.** *Elite™ POS Systems Only.* Merchant shall pay a Software Support Fee per POS System as indicated on the POS Exhibit A. The Software Support Fee will be debited either on a monthly or quarterly basis as listed on the POS Exhibit A. Merchant may be charged the Rapid Response Support Fee on a monthly or quarterly basis as listed on the POS Exhibit A.
- d. **Annual Fee.** *Echo™ POS Systems Only.* Merchant shall pay an Annual Fee of \$79.00. The Annual Fee cannot be waived. The Annual Fee shall be debited on an annual basis per Merchant Location.
- e. **TabbedOut Monthly Fee.** If enrolled in the TabbedOut Program, Merchant will be enrolled in a 60-calendar day Trial Program. Merchant will have free access to the TabbedOut software on the Equipment during this period. Merchant Transaction Processing Agreement Processing Services fees apply. Merchant will receive 2 complimentary TabbedOut Periscope Campaigns during Trial Program (\$9.99 for each additional Periscope Campaign) but Conversion Fees of 25% of the discount a Patron redeems during the Campaign will apply. Unless Merchant opts out prior to the expiration of the Trial Program, the program will automatically convert to the paid TabbedOut Enrollment Program and Merchant will be charged a \$12.50 Monthly Fee. See TabbedOut Program License Agreement in the complete details. This can be found at www.harbortouch.com/tabbedout.
- f. **Terms and Fee Adjustments.** Harbortouch may change any terms, conditions, rates, fees, expenses, or charges incurred under this Service Agreement upon 30-calendar days written notice. If Merchant uses the Equipment and/or the Service after the date the change takes effects, then Merchant will be deemed to have accepted the change. Notwithstanding anything to the contrary, Harbortouch will not change the Total Monthly Service Fees set forth in Section 4(a) during the Initial Term.
- g. **Billing, Payments and Credit Authorization.** Merchant grants to Harbortouch Automated Clearing House (“**ACH**”) Authorization to credit and debit its demand deposit account for all fees incurred under this Service Agreement. Should any ACH debit made upon Merchants demand deposit account for payment due under this Service Agreement reject, for any reason, Merchant shall be charged a Thirty Five Dollar (\$35.00) Non-sufficient Fund fee (“**NSF Fee**”). This authorization shall survive the termination of this Service for as long as Merchant owes any fees, charges or other amounts owed under this Service Agreement.

5. **MERCHANT'S RESPONSIBILITIES**

- a. **Equipment Failure.** Merchant must notify Harbortouch immediately upon Equipment or Software failure. Merchant must allow Harbortouch unrestricted and free access to the Equipment and Software in order to correct such failure. Merchant must provide any necessary data communications facilities and equipment at no charge to Harbortouch.
- b. **Activation of Equipment.** Upon installation of the Equipment at the Merchant Location, Merchant represents and warrants that: (i) the Equipment was received and is accepted by Merchant; (ii) Customization of the Equipment and/or Software (for example, the menu) was completed to the Merchant's specifications; (iii) the Equipment is in good working order; and (iv) the Equipment was tested and is capable of processing card transactions.
- c. **Title to Equipment.** Title to the Equipment will pass to Merchant on the date of shipment. Harbortouch reserves a purchase money security interest in the Equipment throughout the Initial Term of the Service Agreement. Merchant hereby grants to Harbortouch a first priority security interest in the Equipment (including any replacements, substitutions, additions, attachments and proceeds). Merchant agrees that Harbortouch may file, on Merchant's behalf, a UCC-1 Financing Statement and/or other necessary documentation sufficient to protect and secure Harbortouch's security interest. Merchant will promptly execute any other required documents and/or records reasonably requested by Harbortouch for the purpose of securing Harbortouch's rights in the Equipment. Merchant further agrees that it will not pledge, loan or attempt in any other manner to dispose of the

Equipment and/or to suffer any liens, encumbrances, or legal process to be incurred or levied on the Equipment while in Merchant's possession, custody or control. In the event Merchant breaches the Service Agreement, Harbortouch shall be entitled to demand return of the Equipment, and Merchant shall be required to return the Equipment to Harbortouch within 15-calendar days of receiving Harbortouch's written request. If Merchant fails to return the Equipment to Harbortouch then Harbortouch may charge the Merchant for the full cost of the Equipment. The requirement to return the Equipment to Harbortouch shall be in addition to and shall not preclude Harbortouch from exercising any other right or remedy under this Agreement or under applicable law or in equity.

- d. **Taxes.** Merchant shall be responsible for all sales, use, excise, stamp, documentary, value added and ad valorem taxes, license and registration fees, assessments, fines, penalties, and similar charges imposed on the ownership, possession, use of the Equipment by any state, local, federal or national governmental or regulatory authority and shall issue, where required and requested, a valid tax exemption certificate to Harbortouch. Merchant will reimburse Harbortouch for any of these taxes that Harbortouch pays or advances.
- e. **Merchant's Maintenance Efforts.** Merchant shall maintain and protect the Equipment in good operating condition repair, and appearance, and protect the Equipment from deterioration other than normal wear and tear; shall use the Equipment in the regular course of its business, within its normal operating capacity, without abuse, and shall comply with all laws, regulations, directives, requirements and rules with respect to the use, maintenance and operation of the Equipment and Software; Merchant shall use the Equipment and Software solely for business purposes; shall not make any modification, alteration or addition to the Equipment or Software, without the written consent of Harbortouch; shall not at any time affix, and shall not remove the Equipment from the Merchant Location without the written consent of Harbortouch, which shall not be unreasonably withheld.
- f. **Equipment Condition and Return.** All Equipment must be returned to Harbortouch by Merchant within the timeframes specified by this Service Agreement and in good operating condition, subject to ordinary wear and tear. Merchant will not change or remove any lettering or numbering on the Equipment. To extent permitted by applicable law, without demand or legal process, Harbortouch and/or its agents may enter into the premises where the Equipment may be found and take possession of and remove the Equipment, without incurring any liability for such retaking. Any Equipment that is, in Harbortouch's sole discretion damaged above ordinary wear and tear, or is not returned within the timeframe specified in this Section will result in a charge to Merchant of the then current rate of the Equipment.
- g. **Merchant Security.** Merchant shall be responsible for (i) maintaining virus protection and security for all of its systems, data, and overall network access, and (ii) all risk of loss, theft, damage or destruction of the Equipment from any cause whatsoever after taking possession of the Equipment. Merchant acknowledges that security and access to any Equipment located on its premises is solely Merchant's responsibility and agrees to notify Harbortouch immediately if Equipment is lost, destroyed, stolen or taken by any other person.
- h. **Insurance.** While the Equipment is in Merchant's possession, Merchant shall insure the Equipment, at its own cost and expense, against loss or damage resulting from or related to fire, theft, bodily injury, or other casualty in an amount not less than thirty six times the Total Monthly Service Fee. At Harbortouch's request, Merchant shall provide a certificate of insurance to Harbortouch naming it as a loss payee or additional insured under the applicable insurance policy with respect to loss of or damage to the Equipment occurring during the Initial Term.

6. HARBORTOUCH'S RESPONSIBILITIES

- a. **Installation.** Merchant shall be entitled to a one-time installation of the Equipment at Merchant Location. Merchant acknowledges and agrees that the installation of the Equipment must be completed within 60 calendar days from the date the Equipment is shipped by Harbortouch.
- b. **Installation Appointment.** Merchant must make and confirm the installation appointment no less than 48 hours in advance of the appointment. Merchant shall be billed a \$150 reschedule fee if (i) Merchant reschedules the installation less than 24 hours prior to the appointment; (ii) an authorized representative of the Merchant is not available to sign the Installation Form; or (iii) the Merchant Location, in Harbortouch's reasonable discretion, is not suitable to conduct the installation ("**Reschedule Fee**").
- c. **Technical Support.** Harbortouch shall provide merchant with 24 hours a day, 7 days a week remote technical support for the Equipment and Software. Harbortouch will use commercially reasonable efforts to answer questions and resolve any problems related to the Equipment and Software, but does not guarantee resolution of the problems reported.
- d. **Training.** Merchant shall receive complimentary access to Harbortouch's library of online training webinars. During the installation of the Equipment, Merchant shall receive a complimentary training session. Merchant may request additional onsite training, subject to Harbortouch's approval and technician availability. Additional charges may apply.
- e. **Software Customization.** Harbortouch shall provide reasonable Software customization based on the information requested by Harbortouch and provided by the Merchant. Any additional customization after the Equipment has been shipped to the Merchant is expressly excluded from this Service Agreement and will be charged at Harbortouch's then current rate. HARBORTOUCH DOES NOT WARRANT THAT CUSTOMIZATION WILL BE FREE FROM DEFECTS OR MISTAKES. HARBORTOUCH EXPRESSLY DISCLAIMS AND MERCHANT AGREES TO HOLD HARBORTOUCH HARMLESS FOR ANY ERRORS IN THE EQUIPMENT.
- f. **Equipment Support and Maintenance.** Harbortouch shall provide remote support to determine if the Equipment is defective and, if so, at Harbortouch's sole discretion, repair Equipment, send replacement parts, and/or replacement Equipment. Replacement parts and Equipment will be sent to Merchant. Merchant must return all defective Equipment to Harbortouch within 15 calendar days of receipt of the replacement Equipment. Merchant's failure to maintain the Equipment, as set forth in Section 5 (e) shall result in additional charges for the service and/or replacement of the Equipment.
- g. **Software Support and Upgrades.** Harbortouch may, in its discretion, make updates to the Software available to the Merchant. All Software updates must be installed by the Merchant within 30 calendar days of Harbortouch making the Software update available to the Merchant. Harbortouch reserves the right not to provide support services, or charge Merchant additional fees for support, if the Merchant does not install a Software upgrade in the time specified. Harbortouch will provide remote backup of the Software on a regular basis. Harbortouch will use commercially reasonable efforts, in the event of Software failure, to assist Merchant in recovering Software backup files to facilitate the successful operation of the Equipment.
- h. **Non-standard Support and Maintenance.** Harbortouch may in its sole discretion and for additional charges, provide services and make required repair, redesign, reinstall, reconfigure or replace the Equipment when either such services are required due to causes not attributable to normal wear and tear, including, but not limited to: (i) the failure of Merchant to continually maintain the Merchant Location in conformance with commercially reasonable standards; (ii) impairments in the performance of the Equipment resulting from changes in the design of the Equipment made by Merchant or mechanical, electrical, or electronic interconnections made by Merchant; (iii) damage caused by accidents, natural disasters or the negligence of, or improper use or misuse of, the Equipment by Merchant; (iv) damage or necessity of repair resulting from unauthorized maintenance by Merchant or any third party other than Harbortouch or its authorized representative; (v) damage or repair necessitated as a result of relocation of the Equipment; (vi) change in laws or Card Association rules that require service, repair, or replacement above normal day to day maintenance; (vii) any third party hardware or software in conjunction with the use of the Equipment without Harbortouch's express written consent; or (viii) theft of the Equipment.

7. LIMITED SOFTWARE LICENSE

Harbortouch grants to Merchant a non-exclusive, non-transferrable, royalty free license, without the right to sublicense, to use the Software internally in conjunction with the Equipment. Harbortouch reserves all rights not extended hereunder. Merchant may not alter, reverse engineer, decompile, or disassemble the Software, or otherwise attempt to derive source code from the Software. Merchant may not manufacture, copy, sublicense, distribute, replicate, transfer or otherwise dispose of any copies of the Software. Nothing contained in this Service Agreement shall give Merchant any ownership interest, or title to, the Software, source code, and the related documentation. Merchant acknowledges that the performance of the Software is conditioned on Merchant providing, at its sole cost and expense continued and secure network. This license shall immediately terminate upon expiration or termination of this Service Agreement. This license is not a license of any trademarks, service marks, trade names, or logos, and does not include any software other than the Software. Harbortouch reserves the right to amend or otherwise modify this license upon notice to Merchant at any time. Merchants continued use of the Software shall be deemed an acceptance of any change.

8. WARRANTY LIMITATION AND DISCLAIMER.

EXCEPT AS SPECIFICALLY SET FORTH IN THIS SERVICE AGREEMENT, HARBORTOUCH DOES NOT MAKE (AND EXPRESSLY DISCLAIMS) ANY REPRESENTATIONS AND WARRANTIES IN RESPECT OF THE EQUIPMENT, SOFTWARE, PROCESSING SERVICES, AND/OR OTHER SERVICES PROVIDED BY HARBORTOUCH UNDER THIS SERVICE AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. HARBORTOUCH DOES NOT GUARANTEE THAT THE EQUIPMENT AND/OR SOFTWARE WILL SATISFY MERCHANT'S REQUIREMENTS, OR THAT THE OPERATIONS OF SUCH WILL BE UNINTERRUPTED OR ERROR FREE. THE EQUIPMENT, SOFTWARE, AND SERVICES ARE PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT WILL BE WITH THE MERCHANT. HARBORTOUCH SHALL NOT BE LIABLE FOR ANY COSTS OR FOR PERFORMING ANY SERVICES HEREUNDER ARISING IN CONNECTION WITH MERCHANT'S NEGLIGENCE, ABUSE, MISUSE, OR FAILURE TO PERFORM ROUTINE MAINTENANCE AND STANDARD OPERATING PROCEDURES.

HARBORTOUCH DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT, AFTER THE INITIAL INSTALLATION OF THE EQUIPMENT OR ANY SOFTWARE CONTAINED THEREIN, THAT THE EQUIPMENT, SOFTWARE CONTAINED THEREIN, OR CUSTOMER'S DATA WILL REMAIN VIRUS-FREE. MERCHANT WAIVES ANY CLAIMS HEREUNDER AGAINST HARBORTOUCH TO THE EXTENT ARISING FROM MERCHANT'S FAILURE TO HAVE OR MAINTAIN CURRENT VIRUS PROTECTION, OR TO THE EXTENT ARISING AS A RESULT OF A FAILURE OR BREACH OF CUSTOMER'S SECURITY FOR ITS SYSTEMS OR DATA, OR AS A RESULT OF ANY UNAUTHORIZED ACCESS TO MERCHANT'S SYSTEMS. HARBORTOUCH FURTHER DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR PROBLEMS RESULTING IN OR RELATED TO MERCHANT'S DECISION TO USE A PARTICULAR INTERNET SERVICE PROVIDER OR RELATED TO ITS ABILITY TO CONNECT TO THE INTERNET. MERCHANT ACKNOWLEDGES THAT ITS ABILITY TO ACCESS DATA, RECEIVE REMOTE TECHNICAL SUPPORT, AND OPERATE THE EQUIPMENT, MAY BE AFFECTED BY PROBLEMS WITH ITS INTERNET CONNECTIVITY. ANY SUCH PROBLEMS ARISING OUT OF THE FOREGOING IS OUTSIDE OF HARBORTOUCH'S CONTROL. MERCHANT WAIVES ANY CLAIMS IT MAY HAVE AGAINST HARBORTOUCH DUE TO ITS INABILITY TO ACCESS DATA OR CONNECT TO THE INTERNET WHICH IS BASED ON OR ARISING OUT OF ONE OF THE FOREGOING REASONS.

9. LIMITATION OF LIABILITY

HARBORTOUCH AND ITS AFFILIATES, PARENTS, SUBSIDIARIES, SUCCESSORS, AND ASSIGNS SHALL NOT BE LIABLE TO THE MERCHANT OR ITS AFFILIATES, SUBSIDIARIES, SUCCESSORS, OR ASSIGNS, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, BUSINESS INTERRUPTION

OR ECONOMIC DAMAGES (INCLUDING THOSE ASSOCIATED WITH IMPROPER OR INADEQUATE TAXES CHARGED), OF ANY KIND, WHETHER BASED ON CONTRACT, TOR OR ANY OTHER LEGAL THEORY ARISING OUT OF THIS SERVICE AGREEMENT, MERCHANT'S USE (OR INABILITY TO USE) THE EQUIPMENT OR SOFTWARE, EVEN IF ADVISED, IN ADVANCE, OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL THE MERCHANT BE ENTITLED TO RECOVER OR COLLECT ANY DAMAGES IN THE AGGREGATE IN EXCESS OF AN AMOUNT EQUAL TO THE FEES PAID UNDER THIS SERVICE AGREEMENT DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE MERCHANT'S FIRST CLAIM OF ALLEGED DAMAGES.

IN NO EVENT SHALL HARBORTOUCH, ITS AFFILIATES, PARENTS, SUBSIDIARIES, SUCCESSORS, AND ASSIGNS, BE RESPONSIBLE FOR ANY DAMAGES INCURRED AS A RESULT OF DOWNTIME OF THE EQUIPMENT OR SOFTWARE.

10. GENERAL INDEMNITY.

Merchant agrees to indemnify, defend, and hold Harbortouch, its subsidiaries, affiliates, employees, subcontractors, successors, assigns and agents (collectively the "Harbortouch Indemnified Parties") harmless from and against any and all losses, costs, damages, penalties, claims, actions, suits (collectively "Claims") of whatsoever kind and nature arising out of, related to, arising from, or in connection with Merchant's unauthorized modification and/or misuse of the Equipment or Software, or Merchant's breach of this Service Agreement, or from Merchant's negligent acts or omissions. Merchant's indemnification obligation includes but is not limited to the payment of all reasonable attorneys' fees, costs and expenses. Merchant shall promptly notify Harbortouch in writing of any Claim and any such suit will not be settled without Harbortouch's consent, such consent not to be unreasonably withheld. Harbortouch shall cooperate in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Harbortouch.

11. MISCELLANEOUS

a. **Assignment.** Merchant shall not have the right to assign or otherwise transfer its right and obligations under this Service Agreement except with the written consent of Harbortouch. Harbortouch shall have the right to assign any or all of its interest, rights, and obligations in this Service Agreement without the need for consent from Merchant. Any prohibited assignment shall be null and void.

b. **Amendments.** This Service Agreement may be amended by Harbortouch, its affiliates, or assigns, upon thirty (30) days written notice. Merchant's continued use of the Equipment shall be acceptance of such amended terms.

c. **Notices.** Notices permitted or required to be given hereunder shall be deemed sufficient if given by courier service, registered or certified air mail, postage prepaid, return receipt requested, addressed to the respective addresses or the parties as first above written or at such other addresses as the respective parties may designate by like notice from time to time. Notices so given shall be effective as of the date stamped on the receipt.

d. **Severability.** In the event that any of the terms of this Service Agreement are in conflict with any rule of laws, regulations, provisions or otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed amended so that such term of provision complies with such applicable law or regulation, but such invalidity, unenforceability, or revision shall not invalidate any of the other terms of this Service Agreement and it shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Service Agreement.

e. **Agreement to Arbitrate.** Agreement to Arbitrate. (a) Harbortouch and Merchant agree to arbitrate all disputes and claims between each other or its affiliates, subsidiaries, successors, or assigns. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to: (i) claims arising out of or relating to any aspect of the relationship between the parties, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; (ii) claims that arose before this or any prior agreement (including, but not limited to, claims relating to advertising); (iii) claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and (iv) claims that may arise after the termination of this Service Agreement. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Office of the Comptroller of the Currency. Such agencies can, if the law allows, seek relief against us on your behalf. **You agree that, by entering into Service Agreement and this agreement to arbitrate, you and Harbortouch are each waiving the right to a trial by jury or to participate in a class action.** This arbitration provision shall survive termination of the Service Agreement. (b) A party who intends to seek arbitration must first send to the other, by certified mail or courier service a written Notice of Dispute ("Notice"). The Notice to Harbortouch should be addressed to: General Counsel, Harbortouch 2202 N. Irving Street, Allentown, PA 18109 ("Notice Address"). The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought ("Demand"). If Harbortouch and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or Harbortouch may commence an arbitration proceeding. (c) The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this agreement, and will be administered by the AAA. The arbitrator is bound by the terms of this Service Agreement and agreement to arbitrate. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. The parties specifically consent to and accept the jurisdiction of the courts of the State of Pennsylvania and the United States District Court located in Philadelphia, Pennsylvania for the purposes of such enforcement. Unless Harbortouch and you agree otherwise, any arbitration hearings will take place in Allentown, PA.

The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the alternative payment and the attorney premium at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits. (d) The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU, HARBORTOUCH, AND ITS AFFILIATES AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and Harbortouch agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void. (e) Notwithstanding any provision to the contrary, we agree that if Harbortouch makes any future change to this arbitration provision (other than a change to the Notice Address) during the term of your Service Agreement, you may reject any such change by sending us written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision. (f) Merchant and Harbortouch acknowledge and agree that this Service Agreement and Guaranty contained herein, was, and shall be deemed to have been, made and delivered in Lehigh County, Pennsylvania. The laws of the State of Pennsylvania, except as such law is preempted by or inconsistent with applicable federal law shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this Service Agreement and the Guaranty contained herein, including without limitation, the validity, interpretation, construction, performance and enforcement of the Service Agreement and Guaranty contained herein, the courts of the State of Pennsylvania shall have and be vested with personal jurisdiction over the parties. If Merchant brings legal action against Harbortouch for any reason, Merchant shall commence the action within one (1) year of the date the error or the incident-giving rise to such action occurred.

f. **Conflicting Terms.** The terms and conditions of this Service Agreement shall prevail over any additional, contrary terms, or oral representations, which may be contained in any instructions or other communications submitted to Harbortouch by Merchant with respect to this Service Agreement.

g. **Independent Contractor.** Nothing in this Service Agreement or in the performance thereof shall be construed to create any partnership, joint venture, or relationship of principal and agent or employer and employee between Harbortouch and Merchant or any of their respective affiliates or subsidiaries. Harbortouch and Merchant are and shall remain independent contractors. As such, neither Merchant nor any employees, agents or affiliated persons of Merchant shall be entitled under any circumstances to maintain any action against Harbortouch for any physical injury incurred by Merchant or any employees, agents or affiliated persons of Merchant (including, but not limited to, the filing of claims under the workers' compensation laws of any state.) Furthermore, Merchant acknowledges that Merchant shall be solely responsible for the purchase and maintenance of employment and/or workers compensation insurance coverage related to its employees, agents or contractors, and that Harbortouch shall have no responsibility for any such coverage.

h. **Force Majeure.** Any delay or nonperformance of any provision of this Service Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Service Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

i. **No Waiver of Rights.** Unless expressly provided herein, no failure or delay on the part of any party in exercising any right under this Service Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right.

j. **Entire Agreement.** HARBORTOUCH'S REPRESENTATIVES MAY HAVE MADE ORAL STATEMENTS REGARDING THE EQUIPMENT, SOFTWARE OR SERVICES SET FORTH HEREIN. NONE OF THE ORAL STATEMENTS CONSTITUTE WARRANTIES, MERCHANT SHALL NOT RELY ON ANY OF THEM, AND THEY ARE NOT PART OF THE SERVICE AGREEMENT. THIS SERVICE AGREEMENT, INCLUDING THE EXHIBITS ATTACHED HERETO AND INCORPORATED AS AN INTEGRAL PART OF THIS SERVICE AGREEMENT, CONSTITUTES THE ENTIRE SERVICE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES ALL PREVIOUS PROPOSALS, ORAL OR WRITTEN, AND ALL NEGOTIATIONS, CONVERSATIONS OR DISCUSSIONS HERETOFORE HAD BETWEEN THE PARTIES RELATED TO THIS SERVICE AGREEMENT. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT BEEN INDUCED TO ENTER INTO THIS SERVICE AGREEMENT BY ANY REPRESENTATIONS OR STATEMENTS, ORAL OR WRITTEN, NOT EXPRESSLY CONTAINED HEREIN.