POS SYSTEM SERVICE AGREEMENT

TERMS AND CONDITIONS

This POS System Service Agreement ("Service Agreement") by and between Harbortouch and Merchant consists of these Terms and Conditions, POS Exhibit A, and the POS Account Setup Form, all of which are incorporated herein by reference. The Service Agreement is binding on the parties on the date that Harbortouch approves Merchant's signed POS Exhibit A.

PLEASE READ THIS SERVICE AGREEMENT AND UNDERSTAND EACH PROVISION. IT REQUIRES YOU TO USE HARBORTOUCH’S PROCESSING SERVICES. SECTION 11.e REQUIRES ALL CLAIMS OR DISPUTES WITH HARBORTOUCH ABOUT ANY HARBORTOUCH PRODUCT OR SERVICE TO BE RESOLVED IN BINDING INDIVIDUAL ARBITRATION—NOT IN A CLASS ACTION, AND NOT IN COURT BEFORE A JUDGE OR JURY. SECTIONS 8 & 9 LIMIT HARBORTOUCH’S LIABILITY AND YOUR REMEDIES.

1. DEFINITIONS.
   a. "Effective Date" means the Install Date. (b) "Equipment" means the Harbortouch Elite POS or Harbortouch Onyx POS or Harbortouch Echo POS Systems and related peripherals selected on POS Exhibit A. (c) "Install Date" means (i) for Harbortouch Elite/Onyx POS Systems the date on which the Equipment is installed at the Merchant Location or the date on which the Merchant starts using the Equipment, whichever occurs first, (ii) for Harbortouch Echo POS Systems the date on which the Equipment is shipped to the Merchant Location. (d) "Merchant" means the business identified in Exhibit A. (e) "POS Exhibit A" means Exhibit A to the POS System Service Agreement. (f) "Processing Services" means Harbortouch's credit, debit, electronic payment, and gift card processing services as provided for under the Harbortouch Merchant Transaction Processing Agreement. (g) "Software" means the software programs installed on or made available through use of the Equipment, including any application programming interfaces, updates, enhancements, or modifications made by Harbortouch. (h) "Harbortouch" means Harbortouch Financial Services, Inc. and its subsidiary, Shifit Payments, LLC.

2. EXCLUSIVE PROCESSING REQUIREMENT
   a. Harbortouch's Processing Services. Merchant's use of the Equipment requires exclusive use of Harbortouch's Processing Services at all times. Merchant agrees not to use credit, debit, electronic payment, or gift card processing services from any provider except Harbortouch. By entering into this Service Agreement, and as a condition precedent to Harbortouch providing Equipment to Merchant, Merchant 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 with Harbortouch. (i) If at any time after the Install Date Merchant stops using Harbortouch's Processing Services, in whole or in part, then Harbortouch shall charge Merchant $75.00 per Equipment terminal for each 30-day period that Harbortouch's Processing Services are not used ("Inactivity Fee"). The Inactivity Fee is in addition to any other fees or charges. Notwithstanding the foregoing, Harbortouch reserves the right to terminate this Service Agreement or suspend Merchant's access to the Equipment and/or Software for Merchant's intentional non-use of Harbortouch's Processing Services. (ii) Harbortouch reserves the right to stop the Software from functioning or revoke the Software License in the event Merchant does not utilize the Processing Services.

3. TERM COMMITMENT
   a. Term. This Service Agreement begins on the Effective Date and continues for one (1) year ("Initial Term"). At the expiration of the Initial Term, this Service Agreement automatically renews for additional one (1) year period ("Renewal Term") unless Merchant provides Harbortouch with written notice of Merchant's intent not to renew the Service Agreement at least 30 days prior to the expiration of the Initial Term or any Renewal Term.
   b. Term Commitment. Merchant understands that it is receiving Equipment and Software from Harbortouch at favorable pricing in exchange for Merchant's term commitment. In addition to Merchant's obligations as set forth in Section 3(a), Merchant may terminate this Service Agreement subject to the following conditions: (i) Merchant may terminate this Service Agreement for any reason prior to the Install Date. All Equipment must be returned to Harbortouch within 15 days following termination. Upon completion of cancellation paperwork, Merchant shall be provided with shipping labels in order to return all equipment to Harbortouch. (ii) Merchant may terminate this Service Agreement upon Harbortouch's default of any material obligation to Merchant hereunder and the failure of Harbortouch to cure such default within thirty (30) days after written notice of such default is received. In the event Merchant terminates this Service Agreement for any other reason after the Install Date, Merchant shall be in material breach of this Service Agreement. Upon completion of cancellation paperwork, Merchant shall be provided with shipping labels in order to return all equipment to Harbortouch. (iii) Harbortouch may debit the fees derived from Merchant's termination of this Agreement from Merchant's bank account on file with Harbortouch within 30 days of the date this Service Agreement is terminated. Merchant is responsible for all additional fees and charges (including taxes) incurred under this 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) material breach of this Service Agreement; (ii) unlawful use of the Equipment, Software, or Processing Services; (iii) unauthorized modification of the Equipment or Software or installation of unauthorized third-party software; (iv) failure or refusal to pay fees or charges on time; (v) material 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 and charges incurred under this Service Agreement.
   d. Trial Period. Merchant may cancel the Service Agreement without any penalty within thirty (30) calendar days from the Install Date ("Trial Period"). If MERCHANT DOES NOT CANCEL BEFORE THE EXPIRATION OF THE TRIAL PERIOD THEN MERCHANT SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE SERVICE AGREEMENT. Notwithstanding anything to the contrary herein, Merchant shall be responsible for the cost of shipping Equipment to and from the Merchant Location and any additional wiring completed. All fees and charges incurred by Merchant will be charged to Merchant's bank account on file with Harbortouch in accordance with the Service Agreement's Terms and Conditions. ALL CHARGES ASSOCIATED WITH THE RETURN OF EQUIPMENT TO HARBORTOUCH SHALL BE BORNE BY THE MERCHANT. MERCHANT AUTHORIZES HARBORTOUCH TO DEBIT MERCHANT'S ACCOUNT UPON RECEIPT OF NOTICE OF CANCELLATION. Additional equipment added after the original Install Date will not be eligible for the 30 day Trial Period.

4. FEES AND PAYMENT
   a. Total Monthly Service Fees. Merchant shall pay the Total Monthly Service Fee listed on POS Exhibit A on 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 (e.g., 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 the carrier. The current shipping fees are:

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   c. Software Support Fee. During the Term of this Agreement and the Merchant Transaction Processing Agreement Merchant shall pay a Software Support Fee per Equipment terminal as indicated on POS Exhibit A. The Software Support Fee will be debited on a monthly basis.
   d. Annual Fee. Merchant shall pay an Annual Fee of $79.00. The Annual Fee cannot be waived. The Annual Fee shall be debited annually per Merchant Location.
   e. SkyTab Data Plan. If Merchant enables, and consumes 4G LTE cellular data on its SkyTab device(s), Merchant agrees that it shall pay the SkyTab Data Plan fee of $15.00 per device per month. Merchant understands and agrees that the SkyTab Data Plan is not an unlimited data plan, and that Merchant may be subject to pro-rata surcharging in the event Merchant consumes in excess of 200 MB in any calendar month. The SkyTab Data Plan Fee shall be debited monthly per Merchant Location. Merchant must contact Company if Merchant wishes to disable its 4G LTE capabilities as per SkyTab Data Plan Fee Billing.
   f. Changes to Terms and Fees. Harbortouch may change any terms, conditions, rates, fees, or charges incurred under this Service Agreement upon 30 days' written notice to Merchant. Using the Equipment or Service after a change takes effect constitutes acceptance of the change.
   g. Billing, Payments, and Credit Authorization. Merchant grants to Harbortouch Automated Clearing House ("ACH") Authorization to credit and debit Merchant's demand deposit account for all fees and charges incurred under this Service Agreement. Should any ACH debit made upon Merchant's demand deposit account for payment due under this Service Agreement reject for any reason, Merchant shall be charged a $25.00 Merchant's Substantiation Funds Fee ("NSF Fee"). This authorization shall expire upon termination and last as long as Merchant owes any fees or charges, incurred 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 to correct failures. Merchant must provide any necessary communication 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) Merchant received and accepts the Equipment; (ii) customization of the Equipment and/or Software (for example, the menu) was satisfactorily programmed to Merchant's specifications; (iii) the Equipment is in good working order; and (iv) the Equipment is available through use of the Equipment, including any application programming interfaces, updates, enhancements, or modifications made by Harbortouch. (h) "Harbortouch" means Harbortouch Financial Services, Inc. and its subsidiary, Shifit Payments, LLC.
   c. Title to Equipment. (i) Initial Term. In the event Merchant materially breaches this Service Agreement, Harbortouch may demand return of the Equipment, and Merchant shall be required to return the Equipment to Harbortouch within 15 days of receiving Harbortouch's written request. Merchant agrees to continue to pay the Total Monthly Service Fee as indicated on Exhibit A until such calendar month that Merchant returns all equipment to Company. The requirement to return the Equipment to Harbortouch is in addition to and shall not preclude Harbortouch from exercising any other right or remedy under this Service Agreement or applicable law.
(ii) Security Interest. Merchant hereby grants to Harbortouch a first priority purchase money security interest in the Equipment (including any replacements, substitutions, additions, attachments and procurements). Merchant agrees that Harbortouch may, 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.

d. Taxes. Merchant will 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, or use of the Equipment by any state, local, or federal governmental or regulatory authority and shall, 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 on behalf of Merchant.

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 that which may normally occur through ordinary use and maintenance or the use of ordinary replacement parts. Merchant shall use the Equipment 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 affix, and shall not remove the Equipment from the Merchant Location without Harbortouch's written consent, and shall not allow any third party to move the Equipment from the Merchant Location without Harbortouch's written consent.

f. Equipment Condition and Return. All Equipment must be returned to Harbortouch by Merchant within the timeframes specified by this Service Agreement in good operating condition other than normal wear and tear. Merchant will not change or remove any lettering or numbering on the Equipment. To extend permitted by applicable law, without demand or legal process, Harbortouch and its agents may enter into the premises, including the Merchant Location, where the Equipment may be located and take possession of the Equipment. To the extent liability arises, Merchant shall indemnify and hold harmless Harbortouch and its agents from and against any liability, cost, expense, or damage arising out of the possession of the Equipment. Harbortouch acknowledges that security and access to any Equipment located on or arising out of any of the foregoing reasons.

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 unauthorized access from unauthorized possession of the Equipment. Merchant acknowledges that security and access to any Equipment located on or arising out of any of the foregoing reasons.

h. Insurance. While the Equipment is in Merchant's possession or control, Merchant shall insure the Equipment at its own cost and expense against loss or damage from fire, theft, bodily injury, or other casualty in an amount not less than twice the Monthly Service Fee. To the extent liability arises, Merchant shall indemnify and hold Harbortouch harmless from and against any liability, cost, expense, or damage arising out of the possession of the Equipment.

6. HARBORTOUCH’S RESPONSIBILITIES

a. Installation. (i) Harbortouch Elite/Onyx POS Systems Only. Merchant shall be entitled to a one-time installation of the Equipment at the Merchant Location. Merchant must make an installation appointment with Harbortouch and confirm that at least 48 hours prior to the appointment. Merchant shall be billed a $199.00 rescheduling fee if (i) Merchant reschedules the installation less than 24 hours from the appointment; (ii) Merchant does not have an authorized representative present; or (iii) a computer is not available to acknowledge the installation in writing; or (ii) Merchant, at Harbortouch's reasonable discretion, is not suitable to conduct the installation ("Reschedule Fee").

b. Equipment / Software Support and Maintenance. Harbortouch shall provide Merchant with 24 hours a day, 7 days a week remote technical support for the Software and Equipment. Harbortouch will use commercially reasonable efforts to answer questions and resolve any problems reported. Harbortouch will provide remote support to determine if the Equipment is defective and, if so, at Harbortouch's sole discretion, it will: repair Equipment, send replacement parts, and/or replacement Equipment. Merchant must return all defective Equipment to Harbortouch within 15 days of receipt of the replacement Equipment. Merchant's failure to meet the Equipment's return provisions will result in Harbortouch reclaiming the Equipment. Harbortouch shall not be liable for or reimbursed for any replacement equipment charges or service charges associated with the problems reported.

c. 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.

d. Software Customization. Harbortouch shall provide reasonable Software customization based on the information requested by Harbortouch and provided by Merchant. Any additional customization outside the Harbortouch's reasonable discretion, is not suitable to conduct the installation is 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 DAMAGES IN EXCESS OF THE FEES PAID UNDER THIS SERVICE AGREEMENT DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE OF MERCHANT’S FIRST CLAIM OF INJURY OR DAMAGE.

7. LIMITED SOFTWARE LICENSE

Harbortouch grants Merchant a non-exclusive, non-transferable, royalty free license, without the right to sublicense, to use the Software internally in conjunction with the Equipment. Harbortouch reserves the right not to provide support services, or charge Merchant additional fees for support, if Merchant does not install a Software update on time. 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.

f. Non-standard Support and Maintenance. Harbortouch may, in its sole discretion, make Software updates available to Merchant. Merchant must install all Software updates within 30 days. Harbortouch reserves the right to charge Merchant for any additional charges. Harbortouch does not install a Software update on time. 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.

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 NONINFRINGEMENT, AND ANY WARRANTIES WHICH MAY ARISE FROM PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. HARBORTOUCH DOES NOT GUARANTEE THAT THE EQUIPMENT OR SOFTWARE WILL SATISFY MERCHANT’S REQUIREMENTS, OR THAT THE OPERATIONS OF SUCH WILL BE UNINTERRUPTED OR ERROR FREE. THE EQUIPMENT, SOFTWARE, AND PROCESSING SERVICES ARE PROVIDED "AS IS" WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT WILL BE WITH THE MERCHANT. SHOULD THE EQUIPMENT OR SOFTWARE PROVE DEFECTIVE, MERCHANT, AND NOT HARBORTOUCH, ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING OR REPAIR. 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 OR OPERATING PROCEDURES.

HARBORTOUCH DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT AT THE INITIATION OF THE INSTALLATION OF THE EQUIPMENT AND SOFTWARE, THAT THE EQUIPMENT, SOFTWARE AND CUSTOMERS' DATA WILL REMAIN VIRUS-FREE. MERCHANT WAIVES ANY CLAIMS HEREUNDER AGAINST HARBORTOUCH ARISING FROM MERCHANT’S FAILURE TO HAVE OR MAINTAIN CURRENT VIRUS PROTECTION, OR FROM A FAILURE OR BREACH OF CUSTOMER’S SECURITY FOR MERCHANT’S SYSTEMS OR DATA, OR FROM ANY UNAUTHORIZED ACCESS AND/OR USE OF MERCHANT’S DATA. MERCHANT AGREES THAT THE EQUIPMENT OR SOFTWARE PROVE DEFECTIVE, MERCHANT, AND NOT HARBORTOUCH, ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING OR REPAIR. HARBORTOUCH SHALL NOT BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE FEES PAID UNDER THIS SERVICE AGREEMENT DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE OF MERCHANT’S FIRST CLAIM OF INJURY OR DAMAGE.

IN NO EVENT SHALL HARBORTOUCH’S AFFILIATES (INCLUDING PARENTS, SUBSIDIARIES, AND OTHER RELATED ENTITIES), SUCCESSORS, OR ASSIGNS, BE RESPONSIBLE FOR ANY LIABILITY OR DAMAGE INCURRED AS A RESULT OF DOWNTIME OF THE EQUIPMENT OR SOFTWARE.
10. GENERAL INDEMNITY. Merchant agrees to indemnify, defend, and hold Harbortouch harmless (including parents, subsidiaries, and other related entities), employees, contractors, subcontractors, successors, assigns, and agents (collectively the “Harbortouch Indemnified Parties”) harmless from and against any and all costs, damages, penalties, claims, actions, suits (collectively “Claims”) of whatever kind and nature arising out of, related to, arising from, or in connection with Merchant’s unauthorized modification or misuse of the Equipment or Software, or Merchant’s breach of this Service Agreement, the Equipment, the Software, third parties’ rights, 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. Merchant shall retain counsel reasonably acceptable to Harbortouch and Harbortouch shall cooperate in the defense of such claim. Harbortouch may appear, in its sole discretion and at its own expense, through counsel it selects.

11. MISCELLANEOUS TERMS INCLUDING BINDING ARBITRATION AGREEMENT

a. Assignment. Merchant shall not have the right to assign or otherwise transfer its rights or obligations under this Service Agreement except with the written consent of Harbortouch. Harbortouch shall have the right to assign any of its rights, obligations and in this Service Agreement without the need for consent from Merchant. Any prohibited assignment shall be null and void. This Service Agreement shall be binding upon the heirs, successors, and permitted assigns of the parties.

b. Amendments. This Service Agreement may be amended by Harbortouch, Harbortouch’s affiliates, or assigns, upon 30 days’ written notice. Using the Equipment after a change takes effect constitutes acceptance of the amendment.

c. Notices. Notices permitted or required to be given hereunder shall be deemed sufficient if given by First-Class Mail or electronic mail addressed to Merchant’s address on POS Exhibit A or Harbortouch’s address in Section 11.e(iii). In the event that any notice is required, the effective date of such notice may be designated by the party sending the notice from time to time. Notices so given shall be effective as of the date received.

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 unforeseeable 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, unforeseeability, or revision shall not invalidate any of the other terms of this Service Agreement and it shall continue in force, unless the invalidity or unforeseeability of such provisions hereof does substantial violence to, or where the invalid or unforeseeable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Service Agreement.

11.e. (Arbitration Agreement) applies. To commence an arbitration, submit a Demand for Arbitration with the required fee to the AAA. Binding Arbitration Agreement. The term “Merchant” in this Section 11.e (“Arbitration Agreement”) includes Merchant and the Guarantor(s) listed on POS Exhibit A. This Arbitration Agreement binds all of them and Harbortouch.

(i). Harbortouch and Merchant agree to resolve all claims and disputes of every kind between them or their respective owners, partners, shareholders, affiliates (including parents, subsidiaries, and other related entities), predecessors, successors, or assigns only through binding arbitration before the American Arbitration Association (“AAA”). This Arbitration Agreement is to be broadly interpreted. It includes: (A) claims or disputes relating to any aspect of the relationship between Harbortouch and Merchant including claims or disputes relating to this Service Agreement, the Equipment, the Software, the Processing Agreement, any Harbortouch product or service, and any and all claims, or disputes in which Harbortouch and Merchant are parties (even if the claim or dispute does not involve the Service Agreement), whether based in contract, tort, statute, fraud, misrepresentation, omission, or any other theory; (B) claims or disputes that arose before this Service Agreement or any other agreement became effective (including claims or disputes relating to advertising); (C) claims or disputes in which the subject of purportedly effective but Merchant is not a member of a certified class on that date; and (D) claims or disputes that arise after the termination of this Service Agreement but relate to it or to the Equipment or Software.

(ii). Class Action Waiver. Merchant and Harbortouch waive their rights to sue before a judge or jury and to participate in a class action, class-wide arbitration, private attorney general action, or any other proceeding in which a party acts in a representative capacity. Instead, any claim or dispute will be resolved on an individual basis by a neutral arbitrator whose decision (called an “Award”) will be final except for a limited right of appeal under the Federal Arbitration Act. The arbitrator may not join or consolidate proceedings together without the consent of all parties to all proceedings.

(iii). Before seeking arbitration, Harbortouch or Merchant must first send to the other, by certified mail return receipt requested or a courier service that requires a signature upon delivery, a written Notice of Dispute (“Notice”). A Notice to Harbortouch must be addressed to: Harbortouch Technology, LLC, 2202 N. Irving Street, Allentown, PA 18109. A Notice to Merchant must be addressed to its address in Harbortouch’s records. The Notice must (A) describe the nature and basis of the claim or dispute; and (B) set forth the specific relief sought. If Harbortouch and Merchant do not reach an agreement to resolve the claim or dispute within 30 days after the Notice is received, Merchant or Harbortouch may commence an arbitration.

(iv). Harbortouch or Merchant may bring an individual suit in a small claims court instead of sending a Notice or arbitrating. Merchant may sue in the small claims court in the county of Merchant’s principal place of business or Lehigh County, Pennsylvania: Harbortouch may sue in the small claims court in Merchant’s principal place of business. This Arbitration Agreement does not preclude Merchant from bringing issues to the attention of federal, state, or local agencies (including an attorney general or the Office of the Comptroller of the Currency). Such agencies can, if the law allows, seek relief against Harbortouch on Merchant’s behalf.

(v). The AAA’s Commercial Arbitration Rules, as modified by this Arbitration Agreement, apply. To commence an arbitration, submit a Demand for Arbitration with the required fee to the AAA and send a copy to Harbortouch at the address in Section 11.e(ii). For information, visit arb.org or call 1-800-778-7879. For disputes involving $25,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing. Any in-person hearing will be held in the county of Merchant’s principal place of business.

(vi). For disputes involving $75,000 or less, Harbortouch will pay all AAA fees and arbitrator’s fees and will promptly refund Merchant’s filing fee, unless the arbitrator finds the arbitration frivolous or brought for an improper purpose. For disputes involving more than $75,000, AAA rules govern fees. Harbortouch will not seek its attorney’s fees or expenses in any arbitration.

(vii). The arbitrator may award the same relief as a court could but may award declaratory or injunctive relief only to the individual party and only to the extent necessary to provide for that party’s individual claim. No party with jurisdiction will modify the arbitrator’s award.

(viii). If the class action waiver in Section 11.e(i) is found to be illegal or unenforceable as to all or any part of a claim or dispute, then the Arbitration Agreement is null and void to that part, which shall proceed in court with the rest proceeding in individual arbitration. If any other provision of the Arbitration Agreement is found to be illegal or unenforceable, that provision shall be severed and the rest will continue to apply in individual arbitration.

(ix). Notwithstanding any provision to the contrary, if Harbortouch makes any future change to this Arbitration Agreement (other than address changes) during the Initial Term or a Renewal Term, Merchant may reject that change by sending Harbortouch written notice within 30 days of receiving notice of the change to the address in Section 11.e(iii). The version of the Arbitration Agreement as in force just before the rejected change will govern.

(f). Binding Agreement. This Agreement shall not become a binding Agreement between the Parties until it is approved by Harbortouch. The commencement of the transaction processing under this Agreement shall constitute Harbortouch’s approval and its signature to this Agreement.

g. Governing Law. The laws of the State of Merchant’s principal place of business govern this Service Agreement, including claims for its enforcement or breach, except that the Federal Arbitration Act governs all matters relating to arbitration.

h. Privy Policies. This Service Agreement, you agree to abide by the terms of Harbortouch’s Privacy Policy. The Privacy Policy can be found at www.harbortouch.com/privacy-policy. For avoidance of doubt, you give Harbortouch the permission to, but not limited to, collect and allow third parties to utilize: User-Provided Information, Service Information, Third-Party Software Information, and Transaction Data.

i. One-Year Limit on Claims and Disputes. Any claim or dispute must be filed in arbitration or small claims court (or in court if the Arbitration Agreement is found to be illegal or unenforceable as to all or in force just before the rejected change) within one (1) year of the date it first could be filed. Otherwise it is permanently barred.

j. Conflicting Terms. This Service Agreement shall prevail over any conflicting terms or statements that may be contained in any instructions or other communications Merchant submits to Harbortouch with respect to this Service Agreement.

Independent Contractor. Nothing in this Service Agreement or in its performance 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 bodily 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 workers’ compensation, and liability insurance coverage related to its employees, agents, or contractors, and that Harbortouch shall have no responsibility for any such coverage.

Force Majeure. Any delay or nonperformance of any provision of this Service Agreement (other than for payment of fees or charges incurred under this Service Agreement or the requirement to file claims or disputes within one (1) year) 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, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

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.

Survival of Some Terms. Sections 2, 3, 4, 5(d), 7, 8, 9, 10, and 11, and any other provision that by its terms survives termination, shall survive the termination of this Service Agreement and continue to bind Harbortouch and Merchant.

Entire Agreement. HARBORTOUCH’S REPRESENTATIVES MAY HAVE MADE ORAL STATEMENTS REGARDING THE EQUIPMENT, SOFTWARE, OR SERVICES. NONE OF THE ORAL STATEMENTS CONSISTE WARRANTIES, HARBORTOUCH SHALL NOT RELY ON ANY OF THEM, AND THEY ARE NOT PART OF THIS SERVICE AGREEMENT. THIS SERVICE AGREEMENT, INCLUDING ITS EXHIBITS, CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES ALL PREVIOUS PROPOSALS, ORAL OR WRITTEN, NEGOTIATIONS OR DISCUSSIONS BETWEEN THE PARTIES RELATED TO THIS SERVICE AGREEMENT. MERCHANT ACKNOWLEDGES THAT IT HAS NOT BEEN INDUCED TO ENTER INTO THIS SERVICE AGREEMENT BY ANY REPRESENTATIONS OR STATEMENTS, ORAL OR WRITTEN, NOT EXPRESSLY CONTAINED IN THIS SERVICE AGREEMENT.