



Reseller Terms – POS Hardware, Software

Terms and Conditions Sales to Resellers

The parties agree that all sales of POSBANK products to Reseller shall be governed by and subject to the following terms and conditions:

1. PRICES. The prices of Equipment purchased or licensed from POSBANK are F.O.B. point of shipment and exclusive of all sales, use, excise or other taxes.

1.1 ADVERTISING. Reseller agrees advertising for all POSBANK products will be listed ONLY at MSRP or Call for Quote. No reduced and or discounted advertised priced is allowed. Reseller agrees to advertise only on their company website, and not on 3rd party websites, Internet store fronts, web retailers, or unauthorized trade periodicals unless approved in writing by POSBANK ahead of time.

2. TAXES AND DUTIES. The purchase price offered by POSBANK is exclusive of any applicable taxes, duty, tariffs or fees (collectively “taxes and fees”) including but not limited to sales, use, excise, import, export, or any similar tax or any fee to comply with applicable government imposed environmental regulations including but not limited to elimination of certain chemical content and recycling fees. Consequently, in addition to the selling price specified in this Agreement, the amount of any present or future sales, use or duty or similar tax applicable to the sale or license of the Equipment required by this Agreement shall be paid by Reseller, or in lieu thereof, Reseller shall provide POSBANK with a tax exemption certificate acceptable to the applicable tax authorities. Reseller shall also be responsible for reporting and paying all customs, import, and remittance duties or assessments arising from the import of the Equipment into any and all countries. Reseller shall indemnify and hold harmless POSBANK from all claims and liability resulting from Reseller’s failure to report or pay such amounts.

3. DELIVERY, TITLE, RISK OF LOSS. Delivery will be F.O.B. point of shipment. Unless otherwise directed by Reseller, POSBANK will prepay the freight and bill Reseller for transportation charges. Title and risk of loss shall pass to Reseller upon delivery of the Equipment by POSBANK to the carrier.

4. PAYMENT. Terms are: Order balance invoiced upon shipment. Payment, inclusive of all applicable taxes and fees, shall be due within thirty (30) days of date of invoice. Any delay in the transmission of the invoice from us to you, resulting from any cause arising after dispatch of the invoice by us and over which we have no control, shall not extend the period of payment. All payments due to POSBANK hereunder will be made in U.S. Dollars. An interest charge of the lesser of 1.5% per month or the maximum applicable under local law shall be paid on all overdue accounts to the extent permitted by law.

5. SECURITY INTEREST. POSBANK shall have, and is hereby granted, a security interest in all inventory of Equipment sold by POSBANK to Reseller pursuant hereto, and in all proceeds and products therefrom, whether now held or hereafter acquired, including, without limitation, all accounts receivable, notes receivable, contract rights and other commercial paper of any kind arising from the sale by Reseller of the Equipment covered hereby, to secure the full and prompt payment and/or performance of all obligation hereunder and otherwise of Reseller to POSBANK. A copy of this Agreement may be filed with appropriate authorities at any time after execution by you as a financing statement in order to perfect our security interest. You agree to execute and deliver any additional document or instrument we may reasonably request from time to time to perfect our security interest in the Equipment. Without limiting the foregoing, you agree that we are hereby authorized to file or record, without your signature, this Agreement or any applicable financing statement under the Uniform Commercial Code showing our interest in the Equipment.

6. EQUIPMENT LIMITED WARRANTY



6.1 Product Warranties. POSBANK represents and warrants to Reseller that for the period specified by POSBANK in the written limited warranty statement provided with the POSBANK Equipment or, if no warranty statement is provided with the POSBANK Equipment, the limited warranty statement available from POSBANK, that all POS Products under this Agreement will conform to the then-current Specifications and other criteria referred to in this Agreement or agreed to by the parties in writing, conform strictly to the terms and conditions of this Agreement and be free from defects in design, material, and workmanship.

6.2 POSBANK sole responsibility under this limited warranty shall be either to repair or to replace, at its option, any POSBANK Equipment that fails because of defect(s) in workmanship or material. Replacement of POSBANK Equipment and parts may not be newly manufactured. However, POSBANK warrants all replacement POSBANK Equipment and parts to be equivalent to new in performance. With respect to any warranty work performed by POSBANK, replaced POSBANK Equipment and parts become POSBANK property.

6.3 The above warranty is null and void if the POSBANK Equipment or its component parts are operated beyond the limits or in an unacceptable environment specified by POSBANK in its specifications or if the POSBANK Equipment or its component parts are subjected to misuse; installation/maintenance by someone other than Reseller, POSBANK or POSBANK's subcontractors; negligence; accident or vandalism. Any replacement items supplied by POSBANK in connection with this warranty are subject to the same warranty for the remaining original warranty period. All defective POSBANK Equipment or parts which are replaced by POSBANK shall be returned by Reseller to POSBANK within thirty (30) days from the original RMA. All defective POSBANK Equipment not returned shall be billed to and paid for by Reseller. Reseller will be responsible for the proper packing of any POSBANK Equipment returned to POSBANK for repairs. Reseller will also assume the entire risk of loss or damages during return of defective POSBANK Equipment to POSBANK and subsequent return to Reseller of the repaired item.

6.4 The foregoing remedy of repair or replacement shall be reseller's sole and exclusive remedy either under this agreement or otherwise. The sole purpose of the stipulated exclusive remedy shall be to provide the reseller with free repair and replacement of defective parts in the manner provided for herein. This exclusive remedy shall not be deemed to have failed in its essential purpose so long as POSBANK is willing to repair or replace the defective parts in the prescribed manner. POSBANK neither assumes nor authorizes any other person to assume on its behalf any other liability in connection with the sale or use of the equipment sold.

6.5 Warranty Limitation. This warranty is in lieu of other warranties including the implied warranties of merchantability, fitness for a particular purpose, and the warranty against infringement specified in the uniform commercial code. All other warranties are expressly disclaimed.

6.6 The foregoing warranty is in lieu of all other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

6.7 POSBANK does not warrant the third-party software or third-party products.

6.8 Warranty Exclusions. The warranties specifically set forth in Section 6.1 will not apply to any Product or Parts to the extent such Products or Parts: (i) have been improperly installed, repaired, altered, or otherwise modified; (ii) have been subjected to misuse, abuse, negligence or accident; (iii) have been used in a manner contrary to POSBANK's written instructions or Documentation; (iv) are comprised of materials provided or a design stipulated by Reseller and not approved by POSBANK in writing or; (v) are used Products or Parts and do not cover normal wear and tear.

6.9 To extent not prohibited by applicable, in no event shall POSBANK be liable for personal injury, or any incidental, special, indirect or consequential damages whatsoever, including, without limitation, damages for loss of profit, corruption R loss of data, failure to transmit or receive any data, Business interruption or any other commercial damages or losses, arising out of or related to reseller's use or inability to use the POSBANK licensed materials, services or any third party software or applications in conjunction with the



POSBANK products, licensed materials or services. However, caused, regardless of the theory of liability (contract, tort or otherwise) and even if POSBANK has been advised of the possibility of such damages. In no event will POSBANK be liable for any interruption or loss of service, loss of profits, loss of sales, indirect, special, consequential damages, or other similar damages arising out of any breach of this Agreement or obligation under this Agreement even if POSBANK has been advised of the possibility of such damages. Reseller must notify POSBANK of a defect within fifteen (15) days after discovery of the defect. If the defect is not discovered within the aforesaid warranty period, the claim for defect is waived. The required notice of defect must specify the facts constituting the defect and must be sent by registered mail to POSBANK.

7. LICENSED MATERIALS.

7.1 "Licensed Materials" collectively means (1) the software which is provided in machine-readable form, and shall include any updates which may be provided by POSBANK; (2) software developed and owned by a third party under license to POSBANK with the right to enter into this sub-license; (3) all firmware associated with the Equipment and (4) related licensed materials including, without limitation, operating instructions, guides, manuals and other documentation. No software source programs or source code listings are licensed hereunder.

7.2 The Licensed Materials are licensed and not sold to Reseller. POSBANK grants to Reseller and Reseller hereby accepts a personal, non-exclusive, nontransferable limited license to: (a) use the software in machine readable form in conjunction with the Equipment supplied to Reseller by POSBANK solely for purposes of demonstration to customers and potential customers; (b) sublicense the Licensed Materials to Reseller's customers in accordance with the End User License Agreement provided to Reseller by POSBANK and (c) utilize the related licensed materials in support of Reseller's use of the software.

7.3 All rights not expressly granted in Paragraph 7.2, above, are reserved by POSBANK. Title to the Licensed Materials and all copies thereof is retained by POSBANK or the parties under whose license POSBANK provides the Licensed Materials. No officer, employee or agent of POSBANK is capable of transferring or authorizing the transfer of any ownership interest in or to the licensed materials or any portion thereof, to any person, firm, corporation or governmental authority without the express prior written consent of POSBANK's board of directors under certification by its corporate secretary.

7.4 POSBANK hereby expressly authorizes Reseller to make one copy, solely for archive or backup purposes, of the machine readable or printed portions of the Licensed Materials. The original and any copies of the Licensed Materials, in whole or in part, which are made by the Reseller shall be the exclusive property of POSBANK and governed by this Agreement. Reseller shall maintain records of the number and location of all copies of Licensed Materials. In addition, on any copy in whole or in part, of the Licensed Materials made by Reseller, Reseller must reproduce and include the copyright notice and proprietary legends of POSBANK and/or of any other person/entity who has licensed POSBANK to distribute its software and related materials.

7.5 Reseller acknowledges that the Licensed Materials contain trade secrets and confidential information of POSBANK or of the parties under whose license POSBANK provides the Licensed Materials. Reseller agrees to secure and protect the Licensed Materials and all copies thereof in a manner consistent with the maintenance of POSBANK's rights therein and to take appropriate action by instruction, agreements, or otherwise with its employees who are permitted access to Licensed Materials so as to enable the Reseller to satisfy its obligations hereunder. Reseller shall immediately notify POSBANK of any information which comes to its attention which does or might indicate that there has been any loss of confidentiality of any Licensed Materials.

7.6 The License granted herein may be terminated by written notice from POSBANK to Reseller upon the occurrence of any of the following events: (i) breach by Reseller of the terms of this License, the Reseller



agreement with POSBANK; (ii) a petition under any foreign, state or United States bankruptcy act, receivership statute, or the like, is filed by or against Reseller, or if Reseller voluntarily or by operation of law shall lose control of the operation of its business, except pursuant to a bona fide merger or acquisition; (iii) Reseller ceases to be a reseller for POSBANK and/or (iv) mutual agreement of the parties.

8. LICENSED MATERIALS WARRANTY.

8.1 The licensed materials are provided "As is" without warranty of any kind, either express or implied including but not limited to warranties of merchantability and fitness for a particular purpose.

8.2 POSBANK warrants to Reseller that (i) it has good and clear title to and/or the right to license/sublicense the Licensed Materials to Reseller under the terms and conditions set forth in this Agreement; (ii) it has good and clear title to or the right to license the Licensed Materials free and clear of all liens and encumbrances; and (iii) the POSBANK software and any other software which may be included in the Equipment furnished by POSBANK under this Agreement do not infringe any copyright issued prior to the effective date of this agreement nor do they infringe any other intellectual property right of a third party.

9. EXPORT CONTROLS. Reseller agrees that it will not, without prior written consent of POSBANK, transmit or transfer Licensed Materials or ship the Equipment, directly or indirectly, to any country outside of Reseller's territory. Reseller hereby agrees to comply with all export regulations of the United States and Canada with respect to the export of the Licensed Materials or Equipment.

10. Disclaimer of warranties. Except for the express warranties stated herein, POSBANK disclaims all other express and implied warranties of merchantability or fitness for a particular purpose. No representative of POSBANK or any affiliate is authorized to make to make oral warranties, promises, or representations as to the products and none shall be binding upon POSBANK unless in writing and signed by an officer of POSBANK.

11. INDEMNIFICATION BY POSBANK.

11.1 POSBANK shall defend any action brought against Reseller based on an allegation that the Equipment, POSBANK software or any other software which may be included in the Equipment furnished by POSBANK constitutes an infringement of any United States patent or copyright issued and existing as of the effective date of this Agreement and will pay all reasonable costs and damages finally awarded against Reseller in any such action which are attributable to such claim(s), provided that: (a) Reseller shall promptly notify POSBANK in writing of any notice of any such claim or allegation of infringement; and (b) Reseller allows POSBANK to have sole control of the defense of any such claim, including, without limitation, all communications with claimant, all settlement negotiations, and the conduct of all litigation; (c) Reseller will cooperate with POSBANK and will provide POSBANK with such assistance in such defense as POSBANK may reasonably request; and (d) POSBANK is not responsible for any litigation expenses (including attorney's fees) incurred by Reseller or settlements entered into by Reseller unless POSBANK agrees to them in writing which agreement shall not be unreasonably withheld.

11.2 POSBANK shall have no liability to Reseller hereunder, or otherwise, with respect to claims of infringement which are based on (a) the unauthorized modification of the Equipment or software, (b) use and maintenance of the Equipment or software in a manner or with equipment for which it was not reasonably intended or to the extent not otherwise authorized or permitted by the POSBANK according to the terms of this Agreement, or (c) sale and/or use of the Equipment or software in conjunction with any equipment or software that was not provided by POSBANK.

11.3 The foregoing state POSBANK's entire liability hereunder or otherwise with respect to infringement of patents or other proprietary rights.

12. Limitation of liability. Neither POSBANK nor its suppliers shall have any liability for damages suffered or incurred by reseller or the end user (Including but not limited to, general, special consequential or incidental POSBANK Terms and Conditions Rev 07/09/2017

damages including damages for loss of business revenue or profits, business interruption, loss of business information and the like) Arising from or in connection with the delivery, use or performance of the equipment even if POSBANK and/or its suppliers shall have been advised of the possibility of such damages.

13. **Indemnification by reseller.** Reseller agrees to identify, defend and hold harmless, POSBANK, its parent and affiliated companies from all costs, expenses or damages (including reasonable attorney's fees and internal costs) in connection with any claim made for damages arising out or in connection with installation, relocation or service of equipment by reseller or a third party hired by reseller not under contract by POSBANK. Issued prior to the effective date of this agreement nor do they infringe any other intellectual property right of a third party.

14. **SUPPLIER SOFTWARE PRODUCTS (SSP).** Certain supplier software programs (including the operating system) may be furnished under this Agreement. Reseller agrees to abide by (and provide to the end user) the terms and conditions specified on or within the SSP, their end user license agreements, documentation and/or container which apply to the SSP POSBANK furnishes.

15. **FORCE MAJEURE.** Neither POSBANK nor Reseller shall be liable for delay in the performance of any of its obligations under this Agreement arising out of causes beyond its reasonable control, including but not limited to acts of God, governmental action, fires, floods, epidemics, quarantines, strikes, embargoes, or severe weather.

16. **LEGAL FEES.** In the event that any legal action is initiated to enforce any provision of this Agreement the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in such action.

17. **Governing Law.** This Agreement will be governed by, construed, and enforced in accordance with the laws of the State of California as if entered into in that state by citizens of that state to be performed wholly within that state, and without regard to its conflict of laws provision.

Amendments and Waivers. No amendment of this Agreement will be valid unless stated in writing and signed by authorized representatives of the Parties. No waiver of any default, misrepresentation or covenant will affect any prior or subsequent default, misrepresentation, or covenant.

Attorneys' Fees. In any litigation, arbitration, or other proceeding by which one Party either seeks to enforce its rights under this Agreement or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be awarded its reasonable attorneys' fees, and costs and expenses incurred.

Arbitration. Any dispute or controversy arising out of or relating to this Agreement, its construction or its actual or alleged breach will be first decided by mediation. If the mediation does not result in a resolution of such dispute or controversy, then the dispute shall be submitted to arbitration in accordance with the rules and procedures for commercial arbitration of the JAMS or any successor organization, and in accordance with and subject to all the provisions of the Uniform Arbitration Act as in force in the State of California. The place of arbitration shall be Los Angeles, California.

Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto. This Agreement supersedes any prior oral or written agreements, drafts, understandings or representations between Employee and the Company. No other agreements regarding Employee's services or termination, oral or otherwise, shall be deemed to exist or to bind either party. The provisions of this Agreement may be amended, modified or waived only with the prior written consent of each party hereto.

Counterparts. This Agreement may be executed in one or more counterparts. A copy or facsimile of a signature on this Agreement shall have the same force and effect as an original signature.



18. GENERAL PROVISIONS. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Neither this Agreement nor any variation or modification of this Agreement or waiver of any of the terms or provisions hereof shall be deemed valid and binding upon Reseller or POSBANK unless in writing, signed by an officer of POSBANK and Reseller. Failure by either party to enforce any term hereof shall not be deemed a waiver of future enforcement of that or any other term. This Agreement shall be construed and interpreted in accordance with the laws of the State of California without regard to conflict of law's provisions thereof without regard to the United Nations Convention on Contracts for the International Sale of Goods. Customer hereby agrees the exclusive jurisdiction and venue of the United States District Court for the Los Angeles of California and the Supreme Court of the State of California, as appropriate, for the purposes of adjudicating any dispute or action arising out of or in connection herewith and appoint the Secretary of State of the State of California as agent upon whom service of process, in connection with any suit or other proceeding arising out of this Agreement, may be served upon Customer and Customer agrees to execute and file any and all documents required to effectuate the same. The parties hereby expressly waive application of any other law which may apply to them by reason of their present or future domicile or any other reason whatsoever. If any provision of this Agreement is held invalid under any applicable statute or rule of law, such invalidity shall not affect other provisions of this Agreement and to this end the provisions of this Agreement are agreed to be severable. Notwithstanding the above, such invalid provision or clause shall be construed to the extent possible in accordance with the original intent of the parties. The parties agree that these Terms and Conditions shall govern subsequent purchases of Equipment as may be made by Reseller unless expressly superseded by a document of later date that has been mutually agreed to and executed by the parties.

Agreed:

Company Name

Signature

Printed Name

Title

Date