

MERCHANT APPLICATION (cont.)**COMPLETE IF YOUR SALES ARE GENERATED THROUGH MAIL/TELEPHONE/INTERNET**

1. Description of product sold: _____

2. Who owns product? ☐ Merchant ☐ Vendor (Drop Ship Required)

3. List the name(s) of vendors from which the product is purchased. _____

4. How do you advertise? ☐ Catalog /Direct Mail/Flyers ☐ TV or Radio ☐ Internet (list Web Page Address) _____

5. How does the customer order the product? ☐ Mail ☐ Telephone ☐ Fax ☐ Internet

6. Do your customers sign a service agreement with you? ☐ Yes ☒ No

7. If Yes, what is the timeframe of the service agreement? ☐ Monthly ☐ Quarterly ☐ Annual

8. Name of Fulfillment House (if any) _____ Inspected ☐ Yes ☐ No Date Inspected _____

9. Are consumers required to provide a deposit? ☐ Yes ☒ No

10. Delivery Time Frame: ☐ 0-7 Days ☐ 8-14 Days ☐ 15-30 Days ☐ More than 30 Days

11. Shipping Service Used: ☐ Fed Ex ☐ UPS ☐ Airborne ☐ Express Mail ☐ By Merchant

12. What is your return or refund policy? _____

13. When you receive an authorization, how long before the merchandise is shipped? _____

14. In what geographic areas will the product be marketed and sold? _____

BUSINESS TRADE SUPPLIERS (LIST TWO)

Name	Address	Contact	Phone
Name	Address	Contact	Phone

MERCHANT SITE SURVEY REPORT (To Be Completed by Sales Representative)

Merchant Location: ☒ Store Front ☐ Office Building ☐ Warehouse ☐ Residence ☐ Other

The Merchant: ☒ Owns ☐ Leases the Premises

Landlord Name _____ Landlord Telephone Number _____

I hereby verify that this application has been fully completed by merchant applicant and that I have inspected the business premises of the merchant at this address and the information stated above is true and correct to the best of my knowledge and belief.

Verified and Inspected by (Print Name) _____ Representative Signature _____ Date _____

PRICING SCHEDULE**Other Fees (if applicable)**

Retail (if any % is Swiped) Qualified Credit Card Discount Rate*: 1.69% Transaction Fee: \$0.00	MOTO/Internet (100% Keyed only) Qualified MOTO Credit Card Discount Rate*: 1.69% Transaction Fee: \$0.00 (Must use AVS)	
*For details regarding mid and non-qualified surcharges, please see page 7 section 32 of the terms and conditions. For purposes of this agreement the mid-qualified surcharge is 1.08% (\$1.08 per \$100.00) + \$0.10. For purposes of this agreement the non-qualified surcharge 2.16% (\$2.16 per \$100.00) + \$0.10. Card association assessments will be passed through.	*For details regarding non-qualified surcharges, please see page 7 section 32 of the terms and conditions. For purposes of this agreement the non-qualified surcharge is N/A% (\$N/A per \$100.00). Card association assessments will be passed through.	Touch Tone Transactions: \$ 0.50
		T & E Draft Capture Transactions: \$ 0.00 *
		Address Verification: \$ 0.05
		Batch Header: \$ 0.00 *
		Wireless Transaction Fee: \$ 0.00 *
		Wireless Network Access (Monthly) \$ 0.00 *
		Wireless Activation Fee: \$ 0.00
		Debit Transaction: \$ 0.00
		Debit Gateway (Monthly): \$ 0.00
		EBT Transaction Fee: \$ 0.20
		Internet Gateway Fee (Monthly): \$ 0.00 *
		Internet Transaction Fee: \$ 0.00 *
		PCI Compliance Fee: \$ 79.00
		Monthly Minimum Discount Fee: \$ 79.00
		Monthly Basic Service Fee: \$ 12.95
		Statement Mailing Fee: \$ 0.00
		Chargeback Fee: \$ 25.00
		Retrieval Fee: \$ 15.00
		Account Set-Up Fee: \$ 0.00 *
		Annual Fee: \$ 79.00
		Voice Authorization Fee: \$ 1.00
Mastercard Network Access Fee: \$0.0208. Visa Network Access Fee: \$0.0218. Discover Network Access Fee: \$0.0185. Amex Network Access Fee: 0.15%. PayPal Network Access Fee: \$0.0185.	Mastercard Network Access Fee: \$0.0208. Visa Network Access Fee: \$0.0218. Discover Network Access Fee: \$0.0185. Amex Network Access Fee: 0.15%. PayPal Network Access Fee: \$0.0185.	

See Terms and Conditions of Merchant Service Agreement for further information on Mid and Non-Qualified Surcharges.

I understand and acknowledge that I will be automatically enrolled in a 60-day free trial of the My Biz Perks Program, which includes custom reporting and alerts, supplies, extended warranty, overnight replacement on equipment, partner discounts, and more! At the end of the trial, I understand that my account will be charged a monthly membership fee, and I may opt out at any time by visiting www.mybizperks.com or call 877-898-1992.

\$ 11.95

CARDHOLDER DATA STORAGE COMPLIANCE & SERVICE PROVIDER

**** PCI DSS and card association rules prohibit storage of track data under any circumstances. If you or your point of sale (POS) system pass, transmit, store or receive full cardholder's data, then the POS software must be PA DSS (Payment Application Data Security Standard) compliant or you (merchant) must validate PCI DSS compliance (see 1(b) below and questions 3 and 4 must be completed). If you use a payment gateway, they must be PCI DSS compliant.****

1. Have you ever experienced an Account Data Compromise ? ☐ Yes ☒ No If yes, provide date of compromise _____
- a) Have you validated Payment Card Industry Data Security Standard (PCI DSS) compliance? ☐ Yes ☒ No If yes, go to #1b; If no, go to #2
- b) Date of compliance, Report on Compliance or Self-Assessment Questionnaire "SAQ"? _____
- c) What is the name of your Qualified Security Assessor _____ or Self-Assessment Questionnaire (pick one) ☐ A ☐ B
- d) Date of last scan _____ Approved Scanning Vendor's name: _____ ☐ C ☐ D
2. Are you using a "dial-up" terminal or "TTC" Touch Tone Capture? ☐ Yes ☒ No
3. Do you or your Service Provider(s) receive, pass, transmit or store the Full Cardholder Data electronically? ☐ Yes ☒ No
- a) If yes, where is card data stored? ☐ Merchant's Location Only ☐ Merchant's Headquarters/Corp office only ☐ Primary Service Provider
☐ Both Merchant and Service Provider(s) ☐ Other Service Provider ☐ All Apply
4. What Primary Service Provider/Software Developer did you purchase your point of sale POS application from (e.g., software, gateway)? Verifone
- a) What is the name of the Service Provider/Software Developer's application? _____ Software Version #? Softpay
- b) Do your transactions process through any other Service Provider (e.g., web hosting companies, gateways, corporate office)? ☐ Yes ☒ No
- c) If yes, name the other Service Provider? _____

MERCHANT ACCEPTANCE

A copy of the Card Services Terms and Conditions, revision number 07/14, has been provided to you. Please sign below to signify that you have received a copy of the Card Services Terms & Conditions and that you agree to all terms and conditions contained therein. The undersigned is duly authorized to sign on behalf of the Merchant and to bind the Merchant to the terms and conditions set forth in this Merchant Application and Merchant Service Agreement ("Agreement"), which terms and conditions are hereby acknowledged and agreed to by the Merchant, and certifies that all information provided in this Merchant Application is true, correct and complete. In addition by your signature below on behalf of Merchant you authorize Global Direct and/or Member to order a consumer credit report on you, Merchant and each of Merchant's officers, partners, and/or owners, as well as subsequent consumer credit reports, which may be required or used in conjunction with the maintenance, updating, renewal or extension of the services provided hereunder, or in conjunction with reviewing, taking collection action on, or other legitimate purposes associated with the Merchant account. The undersigned, on behalf of the Merchant, authorizes (i) Global Direct, or (ii) the Member, or (iii) solely with respect to uncollected merchant fees, and subject to and only as pursuant to North American Bancard's separate written agreement with Global Direct, North American Bancard, or, (iv) solely with respect to supplies and/or hardware related to merchant business under this Merchant Application, North American Bancard, to initiate automated deposit or debit (ACH) entries to the Merchant's bank account as indicated on this Merchant Application or subsequently provided by Merchant. A MERCHANT'S SUBMISSION OF A TRANSACTION TO GLOBAL DIRECT SHALL BE DEEMED TO SIGNIFY MERCHANT'S ACCEPTANCE OF THE AGREEMENT, INCLUDING THE TERMS AND CONDITIONS HEREIN.

#1 From Application - Signature

Date

#2 From Application - Signature

Date

INDIVIDUAL GUARANTY (NO TITLES) I/We hereby irrevocably guarantee to Global Direct and Member, their successors and assigns, the full, prompt and complete performance of Merchant and all of Merchant's obligations under this Agreement, including, but not limited to, all monetary obligations arising out of Merchant's performance or nonperformance under this Agreement, whether arising before or after termination of this Agreement. The guaranty shall not be discharged or otherwise affected by any waiver, indulgence, compromise, settlement, extension of credit, or variation of terms of this Agreement made by or agreed to by Global Direct, Member, and/or Merchant. I/We hereby waive any notice of acceptance of this guaranty, notice of non-payment or non-performance of any provision of this Agreement by Merchant, and all other notices or demands regarding this Agreement. I/We agree to promptly provide to Global Direct and Member any information requested by either of them from time to time, concerning my/our financial condition(s), business history, business relationships and employment information. I/We agree that Global Direct and Global Direct (on behalf of Member) may order a consumer credit report on me, Merchant and each of Merchant's officers, partners, and/or owners, as well as subsequent consumer credit reports, which may be required or used in conjunction with the maintenance, updating, renewal or extension of the services provided hereunder, or in conjunction with the reviewing, taking collection action on, or other legitimate purposes associated with the Merchant Account. I/We have read, understand, and agree to be bound by the terms and conditions contained in this Agreement on pages 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12.

#1 From Application - Signature

Date

#2 From Application - Signature

Date

For Office Use Only

X	Application Accepted by ISO	Date
X	Accepted by Wells Fargo Bank	Date
X	Accepted by Global Direct	Date



12869 CAPRICORN STREET
STAFFORD, TX 77477
TEL: 1-800-POS-9585
FAX: 1-888-342-7202

AGENT NAME		AGENT #		DATE	
POINT-OF-SALE SYSTEM SERVICE AGREEMENT (EXHIBIT A)					

MERCHANT INFORMATION

MERCHANT LEGAL NAME		BUSINESS PH NO.	FEDERAL TAX I.D. NUMBER	
LEGAL STREET ADDRESS		CITY	STATE	ZIP CODE
MERCHANT DBA NAME ("Merchant")		BUSINESS PH NO.	FAX NUMBER	
BUSINESS STREET ADDRESS		CITY	STATE	ZIP CODE
CONTACT NAME	TITLE	E-MAIL ADDRESS		
TYPE OF OWNERSHIP <input type="checkbox"/> SOLE PROPRIETOR <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION <input type="checkbox"/> LLC <input type="checkbox"/> NON-PROFIT <input type="checkbox"/> OTHER _____				

OWNERS OR OFFICERS

PRINCIPAL #1		% OWNERSHIP	PRINCIPAL #2		% OWNERSHIP
SOCIAL SECURITY #		DATE OF BIRTH	SOCIAL SECURITY #		DATE OF BIRTH
DRIVER'S LICENSE #	STATE	TELEPHONE NO.	DRIVER'S LICENSE #	STATE	TELEPHONE NO.
HOME ADDRESS			HOME ADDRESS		
CITY	STATE	ZIP	CITY	STATE	ZIP

POINT-OF-SALE PACKAGE OPTIONS

In accordance with the terms and conditions set forth in the Service Agreement, and for the Service Fees set forth below, the Merchant shall receive the following:

<input type="checkbox"/> RETAIL OR GROCERY POINT-OF-SALE SYSTEM PACKAGE PACKAGE COMPONENTS: <u>SEE INVOICE</u> # OF POS SYSTEMS: _____ SERVICE FEE: \$ _____ * PER MONTH TOTAL COST: <u>SEE INVOICE</u> INVOICE #: _____	<input type="checkbox"/> RESTAURANT POINT-OF-SALE SYSTEM PACKAGE PACKAGE COMPONENTS: <u>SEE INVOICE</u> # OF POS SYSTEMS: _____ SERVICE FEE: : \$ _____ * PER MONTH TOTAL COST: <u>SEE INVOICE</u> INVOICE #: _____
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*The POS Program requires a thirty-six (36) month Service Agreement at the cost of \$_____ per Month, which includes software support. See Terms and Conditions for further details.

SHIPPING OPTIONS (PER POS SYSTEM)

LOWER 48 STATES:	<input type="checkbox"/> UPS Ground - \$25.00	<input type="checkbox"/> UPS 2 nd Day Air - \$51.50	<input type="checkbox"/> UPS Next Day Air - \$76.95
ALASKA & HAWAII:	<input type="checkbox"/> UPS Ground - \$115.00	<input type="checkbox"/> UPS 2 nd Day Air - \$139.00	

GIFT CARD OPTION

☐ **FREE GIFT CARD ENROLLMENT**

By choosing this option, I understand that I will be enrolled in a 30-day trial* gift card program and will receive 100 free standard gift cards, a window decal, an acrylic display stand with insert and two register decals. Merchant understands that the Gift Card Program has a term of thirty-six (36) months. *During the 30-day trial, the merchant will pay no monthly fees and will not pay for the cost of the 100 Free Gift Card Package. After the 30-day trial, the Merchant will be assessed a monthly gift card service fee of \$39.95 and will be charged for the cost of printing.

☐ **YES**, please enroll me POSSIBLE's Gift Card Program and send me 100 free standard cards. **MERCHANT INITIALS:** _____

PAYMENT INFORMATION AND CREDIT INQUIRY AUTHORIZATION

AUTHORIZATION & AGREEMENT FOR AUTOMATED CLEARING HOUSE (ACH) DEBITS & CREDITS: By my signature below, I hereby acknowledge that the information shown below is true and correct. I also hereby authorize POSSIBLE POS to initiate credit and/or debit entries and adjustments for any credit entries in error to the checking account indicated below and the depository named below for the goods/services described above and for the total amount indicated on the attached invoice, and to credit and/or debit the same such account. I certify that I am an authorized user of this bank account and that I will not dispute the payment with my bank; so long as the transaction corresponds to the terms indicated in this form. Remittance of this form indicates an Authorization on the part of the Merchant to charge amounts authorized on orders placed with POSSIBLE POS. All other charges such as payment amount, frequency, bank account number change, will require a new ACH Debit Payment Authorization Form to be filled out and submitted to Merchant 15 days prior to any change being implemented. I understand that this payment plan may be cancelled by the Service Provider or Merchant due to NSF (Non-Sufficient Funds). I will be liable to pay an NSF Fee of \$25.00 (or the amount allowable by law), which may be automatically debited for each NSF. This authority is to remain in full force and effect until revoked in writing in such time and manner to allow POSSIBLE POS to act.

CREDIT INQUIRY AUTHORIZATION: By my signature below, I hereby authorize POSSIBLE POS to obtain a consumer credit report through a credit reporting agency chosen by POSSIBLE POS. I understand and agree that POSSIBLE POS intends to use the consumer credit report for the purpose of evaluating my financial readiness to enter into this Service Agreement. I further understand that this credit report will be retained on file at the POSSIBLE POS office for use only by POSSIBLE POS staff. This information will not be disclosed to anyone by POSSIBLE POS without written consent unless required by law. My signature below authorizes the release to the credit reporting agency of financial information which I have supplied to POSSIBLE POS in connection with such an evaluation. Authorization is further granted to the credit reporting agency to use photo-static reproduction of this form if required to obtain any information necessary to complete my consumer credit report.

SIGNING BELOW GRANTS POSSIBLE POS AUTHORIZATION TO CHARGE THE PAYMENT ACCOUNT AS SET FORTH HEREIN FOR THE TERM OF THIS AGREEMENT AND GRANTS POSSIBLE POS PERMISSION TO THE RELEASE OF FINANCIAL INFORMATION TO THE CREDIT REPORTING AGENCY AND GRANTS PERMISSION FOR POSSIBLE POS TO OBTAIN A COPY OF MY CREDIT REPORT.

BANKING INFORMATION

TYPE OF ACCOUNT: <input type="checkbox"/> BUSINESS ACCOUNT <input type="checkbox"/> PERSONAL ACCOUNT PLEASE ATTACH A VOIDED CHECK OR DEPOSIT SLIP TO THIS FORM.	
BANK NAME:	ROUTING #:
BANK PHONE NUMBER:	ACCOUNT #:
NAME ON ACCOUNT:	<input type="checkbox"/> CHECKING ACCOUNT <input type="checkbox"/> SAVINGS ACCOUNT <input type="checkbox"/> OTHER

AUTHORIZED SIGNATURE X _____	PRINTED NAME	DATE
PERSONAL GUARANTEE		

DECLARATION OF PERSONAL GUARANTEE: This general, absolute, and unconditional Guarantee by the undersigned is for the benefit of POSSIBLE POS. 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 POSSIBLE POS or its parents, affiliates, successors, and assigns, I absolutely and unconditionally guarantee the full performance of all Merchant's obligations to POSSIBLE POS, together with all costs, expenses, and attorneys' fees incurred by POSSIBLE POS, 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 POSSIBLE POS, its parents, affiliates, successors, or assigns. I waive any right to require POSSIBLE POS, its parents, affiliates, successors, or assigns, to proceed against other entities or Merchant. There are no conditions attached to the enforcement of this Guarantee. I authorize POSSIBLE POS, its parents, affiliates or assigns, to make from time to time any personal credit or other inquiries and agree to provide, at POSSIBLE POS' request, financial statements and/or tax returns. I agree that this Guarantee shall be governed and construed in accordance with the State of Texas, and that the courts of Texas shall have and be vested with personal jurisdiction. The termination of this Agreement or Guarantee shall not release me from liability with respect to any obligations incurred before the effective date of termination. No termination of this Guarantee shall be effected by any change in my legal status or any change in the relationship between Merchant and me. This Guarantee shall bind and inure to the benefit of the personal representatives, parents, heirs, administrators, successors and assigns of Guarantor and POSSIBLE POS.

GUARANTOR'S SIGNATURE	PRINTED NAME	DATE
X _____		

MERCHANT AUTHORIZATION

THE UNDERSIGNED BELOW AGREES TO ABIDE BY THE SERVICE AGREEMENT AND ITS EXHIBITS. THE AGREEMENT CONSISTS OF THE SERVICE AGREEMENT TERMS AND CONDITIONS, INVOICE, EXHIBITS (ENROLLMENT OPTIONS AND MERCHANT AGREEMENT) AND MERCHANT ACKNOWLEDGES RECEIPT OF SERVICE AGREEMENT TERMS AND CONDITIONS, INVOICE AND MERCHANT AGREEMENT TERMS AND CONDITIONS AT THE TIME OF SIGNING. MERCHANT WARRANTS THAT THE INFORMATION PROVIDED TO POSSIBLE POS IS COMPLETE AND ACCURATE. IN WITNESS WHEREOF, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT OT BE EXECUTED BY THEIR DULY AUTHORIZED REPRESENTATIVES EFFECTIVE ON THE DATE SIGNED OR APPROVED BY POSSIBLE POS.

MERCHANT SIGNATURE	PRINTED NAME	MERCHANT LEGAL NAME:	DATE
X _____			

THIS SECTION FOR OFFICE USE ONLY

SALES AGENT NAME	DATE OF RECORDED VOICE VERIFICATION	DATE SHIPPED TO MERCHANT	DATE RECEIVED BY MERCHANT

POSSIBLE POS POINT-OF-SALE ("POS") SYSTEM SERVICE AGREEMENT ("Agreement")

TERMS AND CONDITIONS

THIS AGREEMENT is entered into by and between POSSIBLE POS ("POSSIBLE"), whose principal place of business is 12869 Capricorn Street, Stafford, TX 77477, and Merchant, whose principal place of business is indicated on Exhibit A of this Application. The Terms and Conditions are hereby incorporated herein and made part of this Agreement.

WHEREAS, POSSIBLE has placed certain Equipment at the Merchant location for the exclusive use by Merchant;

WHEREAS, Merchant now desires to purchase services for such Equipment and POSSIBLE agrees to supply such service to the Merchant on the terms and conditions set forth below:

NOW, THEREFORE, in consideration of the foregoing recitals, upon which the parties agree, and of the parties' mutual promises and obligations set forth below, the parties agree as follows:

1. DEFINITIONS:

Merchant Agreement shall mean the separate agreement between POSSIBLE and the Merchant, attached as Exhibit B herein, for the purpose of providing merchant processing services.

Merchant Authorized Representative shall mean the individual authorized to enter into agreements on behalf of the Merchant and who signs this Agreement on behalf of the Merchant.

Merchant Location shall mean the address of the Merchant where the Equipment is physically located as listed in Exhibit A.

Equipment shall mean any products listed in Exhibit A as a Basic Package or Add-Ons / Accessories.

Software shall mean any retail, restaurant or hospitality software provided by POSSIBLE to Merchant, and any additional POSSIBLE software developed, enhanced, or revised from time to time contained in the Equipment.

2. POSSIBLE POS'S OBLIGATIONS

2.1 POS Warranty and Service Agreement: So long as Merchant is not in default of this Agreement, POSSIBLE shall, for the monthly service charges set forth in Exhibit A hereto, provide initial hardware warranty and service support to the Merchant Location as set forth in this Section. This service support described below is remote-access based. It does not provide for on-site service support unless otherwise stated below. To offer the services listed below requires the ability of POSSIBLE's technical support team to access the Merchant's system remotely to resolve issues and make modifications. The availability of a DSL, cable or T1 internet connection at the Merchant's location is required.

a) **Hardware Warranty:** Merchant shall be entitled to a hardware warranty for thirty six (36) months from the date of installation. This warranty covers any PC systems, touch screens, pole displays, magnetic card readers, cash drawers, scanners and printers purchased. PDA's, handheld and mobile devices carry a twelve (12) month warranty from the date of installation. An Extended Hardware Warranty can be purchased at a premium.

b) **Installation:** Merchant shall be entitled to one (1) on-site installation of the Equipment at no charge if site of installation is within 150 miles of Stafford, Texas, including (1) one cable run to a point-of-sale system located no more than ten feet from the wall/cable connection and without the need to install any cable jacks into the wall (hereto referred to as a "Standard Cable Drop"). Merchant must verify time and place of installation. Additional fees will apply if Merchant's site of installation is beyond 150 miles of Stafford, Texas. Additional fees will also apply for cable drops in excess of the one provided herein or if Merchant fails to provide twenty-four (24) hours notice of change of installation date as set forth below. MERCHANT AUTHORIZES POSSIBLE TO LAY ADDITIONAL CABLES AND CABLE LINES THAT DO NOT FIT WITHIN THE DEFINITION OF A STANDARD CABLE DROP AT ITS REASONABLE DISCRETION AT THE TIME OF INSTALLATION. MERCHANT SHALL BE BILLED TWO HUNDRED FORTY NINE (\$249.00) DOLLARS FOR EACH CABLE DROP THAT DOES NOT FIT WITHIN THE DEFINITION OF STANDARD CABLE DROP AND FOR EACH ADDITIONAL CABLE DROP AFTER THE STANDARD CABLE DROP AS SET FORTH ABOVE.

c) **Technical Support:** Merchant shall be entitled to three (3) free remote technical support calls for the Equipment Monday through Friday between the hours of 9 am and 5 pm Central Standard Time. Additional technical support calls and calls after hours will be billed to the Merchant at the rate of \$95.00 per hour. The following services are supported: 1) Hardware: a) One (1) on-site support visit per system (when required) at no charge if site of visit is within 150 miles of Houston, Texas; 2) Network: a) Network TCP/IP configuration; b) Wireless VLAN setup and configuration; c) Remote Systems Access configuration; d) Firewall Configuration; 3) Software: a) Thirty six (36) remote/phone call support incidents; b) Microsoft Windows update; c) Website menu maintenance; d) Aldelo / Salon Iris / Retail Cash Register Pro / Restaurant PRO POS software updates.

d) **Repair/Replacement:** Upon notification either verbal or written, of malfunction of any Equipment covered under this Agreement, POSSIBLE shall provide remote support to determine if the part is defective and, if so, at POSSIBLE's sole discretion, repair Equipment or supply replacement Equipment. Replacement parts shall be sent to Merchant via priority shipping. All inoperative, repaired, or replaced parts are the property of and shall be returned to POSSIBLE. Failure to return replaced or repaired parts will result in charges to Merchant as referenced in Section 3.6. Merchant's failure to maintain the Equipment as set forth in Section 3.3 shall result in additional charges for the service of Equipment.

e) **Voice Verification:** Upon completion of the installation and training presentation, Merchant shall be required to complete a recorded voice verification which shall confirm that the Equipment meets the needs of the business.

Merchant authorizes POSSIBLE to record such verification and agrees that no Equipment shall be shipped prior to such verification. Any additional changes after the Equipment has been shipped to the Merchant are expressly excluded from this Agreement. Additional fees may apply. POSSIBLE DOES NOT WARRANT THAT INSTALLATION WILL BE FREE FROM DEFECTS OR MISTAKES. POSSIBLE EXPRESSLY DISCLAIMS AND MERCHANT AGREES TO HOLD POSSIBLE HARMLESS FOR ANY ERRORS IN THE EQUIPMENT ONCE THE MERCHANT HAS COMPLETED VOICE VERIFICATION.

f) **Warranty Exclusions:** The following are excluded from the POS Warranty as set forth in this section of the Agreement: 1) Damages resulting from abuse, spillage or mishandling of the equipment; 2) Damages resulting from electrical surges or power irregularities. The installation of a UPS device to maintain AC power quality to protect your system is recommended. 3) Damages resulting from installation of other non-qualified products on the systems that could cause Microsoft Windows to malfunction; 4) Damages resulting from Virus injections or inappropriate internet access. The sole intention of the system is for POS use only. It should not be used for office or internet browsing. Internet access is reserved for EDC credit card processing / batching and remote support access; 5) Problems arising from relocating or reconfiguring equipment.

g) **Service Agreement Exclusions:** The following are excluded from the Service Agreement as set forth in this section of the Agreement: 1) A total re-configuration of the entire Menu is not included; 2) Addition of a catering Menu at a later time is a separate fee, unless agreed upon at the time of purchase; 3) Loss of POS Database as a result of a system failure. A timely backup of the POS Database is the responsibility of the Merchant.

2.2 Non-Standard Services: POSSIBLE shall, at its sole discretion, for the additional charges referred to in Exhibit A, provide services and shall repair, redesign, reinstall, reconfigure or replace the Equipment when either is required due to causes not attributable to normal wear and tear, including, but not limited to a) the failure of Merchant to continually maintain the Merchant Location in conformance with commercially reasonable standards; b) 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; c) damage caused by accidents, natural disasters or the negligence of, or improper use or misuse of, the Equipment by Merchant; d) damage or necessity of repair resulting from unauthorized maintenance by Merchant or any third party other than POSSIBLE or its authorized representative; e) damage or repair necessitated as a result of relocation of the Equipment; f) change in laws or Association rules that require service, repair, or replacement above normal day to day maintenance; g) due of any third party hardware or software in conjunction with the use of the Equipment without POSSIBLE's express written consent; or h) theft of the Equipment.

3. MERCHANT OBLIGATIONS

3.1 Notice of Equipment Failure: Merchant shall notify POSSIBLE's personnel immediately upon Equipment failure or malfunction and shall allow POSSIBLE full and free access to the Equipment and the use of necessary data communications facilities and equipment at no charge to POSSIBLE, subject to Merchant's security rules.

3.2 Receipt of Equipment: Merchant warrants that it has completed the voice verification acknowledging the proper customization of the Equipment prior to shipping and has completed an Equipment Sign-Off form acknowledging receipt of the Equipment. Any additional customization of equipment after completion of the verification shall be at additional cost to Merchant.

3.3 Maintenance: Merchant shall maintain the Equipment in good operating condition, repair, and appearance, and protect the same 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; shall use the Equipment solely for business purposes; shall not make any modification, alteration or addition to the Equipment, without the written consent of POSSIBLE; shall not at any time affix, and shall not remove the Equipment from the Merchant Location without the written consent of POSSIBLE, which shall not be unreasonably withheld.

3.4 Merchant Security. Merchant shall be responsible to a) have and maintain in place virus protection and security for all of its systems, data, and overall network access, and b) 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 the Merchant's responsibility and agrees to notify POSSIBLE immediately if Equipment is lost, destroyed, stolen or taken by any other person. POSSIBLE 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 POSSIBLE 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.

3.5 Exclusive Credit Card Processing: Merchant agrees that during the term of this Agreement, and any renewal term that it shall enter into a Merchant Transaction Processing Agreement and exclusively process credit/debit/gift card transactions with POSSIBLE. Failure to do so shall result in POSSIBLE's right to immediately terminate this Agreement as set forth in Section 8, and forfeiture of the Equipment without notice or opportunity to cure. Such termination of this Agreement shall not relieve Merchant of its obligation to pay Fees that have accrued as of the termination date and shall result in an Early Termination Fee as set forth in Section 8.4.

3.6 Equipment Return: Merchant agrees that: a) upon termination of the Agreement, that it shall return all Equipment to POSSIBLE within fifteen (15) days; b) upon receiving replacement Equipment that it shall return any Equipment which it has requested being replaced to POSSIBLE within fifteen (15) days of receipt of the substitute Equipment; c) to the extent permitted by applicable law, without demand or legal process, POSSIBLE, its agents, affiliate, or assigns, may enter into the premises where the Equipment may be found and take possession of and remove the Equipment, without liability of such retaking. Any Equipment that is, a) in POSSIBLE's sole discretion damaged above ordinary wear and tear, or b) 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.

4. CHARGES AND PAYMENTS

4.1 Commencement of Service Charges: Merchant shall be charged Total Monthly Service Fee as set forth in Exhibit A for Equipment upon the first business day of the month immediately after the first transaction processed through POSSIBLE. POSSIBLE shall continue to debit Merchant for service charges on the first of every subsequent month during the term and any renewal term of this Agreement.

4.2 Billing, Payments and Credit Authorization:

a) **Payment.** Merchant grants POSSIBLE, its affiliates, subsidiaries, successors, and assigns, Credit and/or Debit Card Authorization and permission to make a credit inquiry in order to obtain a consumer credit report as set forth in Exhibit A. Payments for amounts owed from Merchant to POSSIBLE will be made via the Payment Authorization procedures set forth in Exhibit A. Merchant has authorized POSSIBLE to use the Payment Procedures and to charge the Merchant's Designated Accounts in accordance with Exhibit A and these Terms and Conditions. Each Tuesday and Friday, or the earliest banking day thereafter if there is a bank holiday on, before, or after, POSSIBLE shall charge Merchant's Designated Accounts for the amounts then owed by Merchant to POSSIBLE for the previous days, including, without limitation, the amount of any (1) applicable fees listed in Exhibit A and (2) payments for processed Transactions. In addition, commencing with the first full calendar month of the terms of the Services Agreement, within the first ten (10) days of each month, POSSIBLE shall charge Merchant's Designated Accounts in the amount of the Service Fee for such month. If any payment made via the Payment Procedures is rejected, returned or is not completed due to insufficient funds or any other reason in the Designated Accounts or due to any action or inaction of the Merchant ("Returned ACH"), POSSIBLE shall have the right, in its sole discretion, to charge a fee ("Returned ACH Fee") as set forth by POSSIBLE in its sole discretion. In addition, until the full amount of the Returned ACH and the Returned ACH Fee is paid and verified, POSSIBLE shall have the right to stop the processing of any Transactions initiated by the Merchant for its customers until POSSIBLE deems necessary. All other charges such as payment amount, frequency, bank account number change, will require a new ACH Debit Payment Authorization Form to be filled out and submitted to Merchant 15 days prior to any change being implemented. Merchant understands that this payment plan may be cancelled by the Service Provider or Merchant due to NSF (Non-Sufficient Funds). Merchant will be liable to pay an NSF Fee of \$25.00 (or the amount allowable by law), which may be automatically debited for each NSF.

b) **Third Parties.** POSSIBLE may share such information with third parties so long as such third party is under no less of an obligation to maintain the security of this information as POSSIBLE.

c) **Designated Accounts.** Merchant has designated in Exhibit A a credit / debit card account(s) identified in the Services Agreement to be charged for amounts due hereunder via the Payment Procedures (collectively, the "Designated Accounts"). Merchant shall keep sufficient funds on deposit in the Designated Accounts to cover the full amount of any deductions to be made by POSSIBLE. After termination of this Agreement, Merchant shall maintain deposits in the Designated Accounts necessary to cover any amounts owed from Merchant to POSSIBLE that Merchant disputes and shall keep such amounts in the Designated Accounts until such dispute(s) are resolved in accordance with the Agreement and its Terms and Conditions.

4.3 Adjustments: POSSIBLE may adjust the monthly service charges in Exhibit A upon thirty (30) days written notice in accordance with the provisions of Section 9.6 hereof.

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

4.5 Shipping: All Equipment shall be shipped via UPS ("Courier") in accordance with the shipping option(s) selected as set forth in Exhibit A. Merchant authorizes POSSIBLE to debit the amount for shipping at the time the unit ships. POSSIBLE shall have no liability for failure of Equipment to reach its destination in a timely manner once it has delivered the Equipment to Courier.

5. **LIMITATION OF LIABILITY AND REMEDIES.**

5.1 Scope of Damages:

POSSIBLE AND ITS AFFILIATES SHALL NOT BE RESPONSIBLE TO THE MERCHANT OR ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, BUSINESS INTERRUPTION, OR OTHER INCIDENTAL, PUNITIVE OR ECONOMIC DAMAGES (INCLUDING THOSE ASSOCIATED WITH IMPROPER OR INADEQUATE TAXES CHARGED), WHETHER ARISING FROM MERCHANT'S USE (OR INABILITY TO USE) THE EQUIPMENT, SERVICES PROVIDED IN CONNECTION HERewith, OR OTHERWISE, EVEN IF ADVISED 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 HEREUNDER DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE MERCHANT'S FIRST CLAIM OF ALLEGED DAMAGES.

5.2 Warranty Disclaimer:

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, POSSIBLE AND ITS AFFILIATES MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY POSSIBLE SERVICE, RELATED PRODUCTS, EQUIPMENT, SOFTWARE OR DOCUMENTATION. THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY POSSIBLE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. POSSIBLE DOES NOT GUARANTEE THAT THE EQUIPMENT WILL SATISFY MERCHANT'S REQUIREMENTS, OR THAT THE OPERATIONS OF SUCH WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS AGREEMENT, IF ANY, THE EQUIPMENT (OR SERVICES) IS PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT WILL BE WITH THE MERCHANT. POSSIBLE 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.

5.3 Force Majeure: Neither party shall be liable for non-performance caused by such events as fires, telecommunications failures, equipment failures, strikes, riots, war, non-performance of vendors, suppliers, processors or transmitters of information, acts of God or any other cause over which the parties have no control.

6. **INSURANCE:**

During the term of this Agreement, Merchant agrees to maintain, at Merchant's expense "Special Form" property insurance protecting the Equipment for its replacement value at a minimum of four thousand five hundred dollars (\$4,500.00) per POS system, naming "POSSIBLE POS" as a loss payee on public liability insurance, in amounts acceptable to POSSIBLE, naming "POSSIBLE POS" as an additional insured. Merchant must provide POSSIBLE satisfactory written evidence of the insurance within thirty (30) days of the commencement date of this Agreement or any subsequent written request. If Merchant does not do so, POSSIBLE may obtain insurance from an Insurer of its choosing in such forms and amounts as POSSIBLE deems reasonable to protect its interests. Such insurance covers the Equipment and POSSIBLE; it does not name the Merchant as the insured. Merchant agrees to pay POSSIBLE periodic charges for insurance that include: a premium that may be higher than if the Merchant maintained its own insurance separately, a finance charge of up to 1.5% per month on any premium advances made by POSSIBLE or its agents, affiliates or assigns, and billing and processing fees; each of which may generate a profit for POSSIBLE and its agents, affiliates, and assigns. POSSIBLE shall discontinue billing insurance charges upon receipt of satisfactory evidence of insurance. Merchant agrees to arbitrate any dispute with POSSIBLE or POSSIBLE's agents, affiliates, or assigns regarding insurance or insurance charges under the rules of the American Arbitration Association in Houston, Texas; provided however, such agreement does not authorize class arbitration.

7. **TERM:**

This Agreement and the Terms and Conditions herein shall be effective commencing on the date that POSSIBLE accepts and executes the Agreement and shall continue in effect for an initial term of thirty six (36) consecutive months [three (3) years], until earlier terminated pursuant to this section. This Agreement shall auto-renew for a period of thirty six (36) months [three (3) years] at the end of any term, unless the terminating party provides 90 days prior written notice to the non-terminating party and the non-terminating party acknowledges such notification as provided for in Section 10.6 of this Agreement.

8. **TERMINATION:**

This Agreement may be terminated in accordance with the following:

8.1 Merchant's Default on Payments: In the event Merchant defaults on any payment due under this Agreement, POSSIBLE shall be entitled to, a) immediately terminate this Agreement, and b) direct POSSIBLE to withhold and collect Merchant processing funds in the amount which it is in default for which POSSIBLE may immediately apply to payment of the fees set forth in Exhibit A.

8.2 Breach: In the event Merchant commits a breach of any of its obligations under Section 3 - Merchant Obligations, POSSIBLE may terminate this Agreement or exercise its rights as set forth in this Section.

8.3 Survival of Merchant's Obligations: Merchant's obligation to pay all charges which shall have accrued hereunder prior to termination of this Agreement shall survive termination, irrespective of the reason.

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

9. **GENERAL TERMS AND CONDITIONS:**

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

9.2 Ownership: The Equipment is, and will remain at all times, the exclusive property of POSSIBLE, its affiliates, successors, or assigns. POSSIBLE shall at all times retain title to the Equipment. Merchant's use of the Equipment is expressly conditioned on the terms of this Agreement and does not confer any ownership rights of any kind in the Merchant. Merchant hereby authorizes POSSIBLE, at Merchant's expense, to cause this Agreement or any statement or any other instrument in respect to this Agreement showing POSSIBLE's interest in the Equipment, to be filed or recorded. Merchant shall at all times keep the Equipment free from legal process or encumbrance whatsoever and, shall indemnify POSSIBLE from any loss caused thereby.

9.3 Confidentiality: Merchant shall not copy, translate, disassemble, or decompile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code any Equipment, or any software or products used in conjunction with the Equipment. Merchant is not permitted to make derivative works of any software, hardware, or otherwise used in conjunction with or part of the Equipment, and ownership of any unauthorized derivative works shall vest in POSSIBLE. Merchant shall not, without POSSIBLE's prior written consent, disclose any of the Proprietary Information of POSSIBLE, including but not limited to the Equipment, to any person, except as is necessary to enable such party to exercise its rights hereunder. Merchant agrees to solely use the Proprietary Information of POSSIBLE as is necessary in its performance under this Agreement and as otherwise necessary to enjoy the acceptable use of the Equipment. Merchant agrees that any party that has access to this information will be subject to the confidentiality terms as set forth in this section.

9.4 Proprietary Interest: Merchant shall have no interest whatsoever, including copyright interest, franchise interests, license interest, patent rights, property rights or other interest in the Equipment or Software provided by POSSIBLE. This Agreement is not construed as granting the Merchant any intellectual rights or intellectual license in any intellectual property which POSSIBLE may obtain in respect of the Equipment and Software. The Merchant will make no attempt to duplicate or otherwise ascertain the Proprietary Information, or otherwise attempt to reverse engineer any POSSIBLE provided Equipment or Software.

9.5 Modifications: This Agreement may be modified or amended by POSSIBLE, its affiliates, or assigns, upon thirty (30) days written notice. Merchant's continued use of the Equipment shall be acceptance of such amended terms.

9.6 Notices: All notices or other communications required to be given hereunder shall be in writing and shall be delivered either personally or by U.S. mail, certified, return receipt requested, postage prepaid, and addressed as provided in this Agreement or as otherwise requested by the receiving party. Notices delivered personally shall be effective upon delivery and notices delivered by mail shall be effective upon their receipt by the party to whom they are addressed.

9.7 Severability: In the event that any of the terms of this 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 stricken from this Agreement, but such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement and this Agreement such 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 Agreement.

9.8 Governing Law: Merchant and POSSIBLE acknowledge and agree that this Agreement and Guarantee contained herein, was, and shall be deemed to have been made and delivered in Harris County, Texas. The laws of the State of Texas, without giving effect to its conflicts of law principles shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this Agreement and the Guarantee contained herein, including without limitation, the validity, interpretation, construction, performance and enforcement of the Agreement and Guaranty contained herein, the courts of the State of New Jersey shall have and be vested with personal jurisdiction over the parties. The parties further agree that any and all actions, claims, suits or proceedings arising out of or relating (directly or indirectly) to this Agreement or the Guaranty contained herein shall be filed and litigated in Harris County, Texas, and such courts shall have exclusive jurisdiction over any action, claims, suit or proceeding arising out of or relating (directly or indirectly) to this Agreement or the Guaranty contained herein. If Merchant brings legal action against POSSIBLE 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.

9.9 Conflicting Terms: The terms and conditions of this Agreement shall prevail over any additional or contrary terms which may be contained in any instructions or other communications submitted to Supplier by Customer.

10. **INDEPENDENT CONTRACTOR:**

The parties intend that any Supplier, in performing services specified in this Agreement, shall act as an independent contractor and shall have complete control of the work and the manner in which it is performed. Supplier is not to be considered an agent or employee of Merchant and is not entitled to participate in any pension plans, or in bonus, stock, or similar benefits that Merchant provides for its employees.

11. **ENTIRE AGREEMENT:**

THIS AGREEMENT, INCLUDING THE EXHIBITS ATTACHED HERETO AND INCORPORATED AS AN INTEGRAL PART OF THIS AGREEMENT, CONSTITUTES THE ENTIRE 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 AGREEMENT. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY ANY REPRESENTATIONS OR STATEMENTS, ORAL OR WRITTEN, NOT EXPRESSLY CONTAINED HEREIN.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement on the date written below.

MERCHANT AUTHORIZED REPRESENTATIVE X _____	PRINTED NAME _____	MERCHANT LEGAL NAME _____	DATE _____
POSSIBLE POS X _____	PRINTED NAME _____	TITLE _____	DATE _____