

HARBORTOUCH ONLINE ORDERING - HOLO™ POS PROGRAM END USER LICENSE AGREEMENT

This Harbortouch Online Ordering - HOLO™ POS Program End User License Agreement, (this "**Agreement**"), is a binding agreement between Harbortouch Payments, LLC as the licensor of the Software ("**Harbortouch**"), and Merchant, the name of which is identified on the Harbortouch POS System Service Agreement ("**Service Agreement**") and the Merchant Transaction Processing Agreement ("**Processing Agreement**") as the licensee of the Software ("**Merchant**").

HARBORTOUCH PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT MERCHANT ACCEPTS AND COMPLIES WITH THEM. BY CLICKING THE "ACCEPT" BUTTON YOU OR BY UTILIZING THE HOLO SOFTWARE TO ACCEPT ELECTRONIC ORDERS AND TRANSACTIONS YOU (A) ACCEPT THIS AGREEMENT ON BEHALF OF MERCHANT AND AGREE THAT MERCHANT IS LEGALLY BOUND BY THE AGREEMENT'S TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF MERCHANT IS A CORPORATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF MERCHANT AND BIND MERCHANT TO ITS TERMS. IF MERCHANT DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, HARBORTOUCH WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO MERCHANT AND YOU MUST NOT USE THE SOFTWARE. MERCHANT MAY TERMINATE THIS AGREEMENT AT ANY TIME SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO A MERCHANT IN THE EVENT OF A DISPUTE (PLEASE SEE SECTION 14 FOR FURTHER DETAILS).

USE OF THE HOLO SOFTWARE AFTER THE THIRTY (30) DAY TRIAL PERIOD SHALL BE SUBJECT TO THE PRICING AND FEES SPECIFIED IN SECTION 9.

THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT MERCHANT DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF HARBORTOUCH'S SOFTWARE.

HARBORTOUCH MAY AMEND ANY PART(S) OF THIS AGREEMENT UPON THIRTY (30) CALENDAR DAYS WRITTEN NOTICE TO MERCHANT. MERCHANT'S USE OF THE SOFTWARE FOLLOWING THE THIRTY (30) CALENDAR DAY PERIOD FOLLOWING SUCH NOTICE SHALL BE DEEMED BY HARBORTOUCH AS MERCHANT'S ACCEPTANCE OF THE AMENDMENT. THE MOST CURRENT FORM OF THIS AGREEMENT SHALL BE AVAILABLE AT WWW.HARBORTOUCH.COM/HOLO/TERMS.

1. **Definitions.** For purposes of this Agreement, the following terms have the following meanings:
 - a. "**Authorized Users**" means the following individual persons authorized to use the Software pursuant to the license granted under this Agreement: Merchant, including but not limited to Merchant's employees.
 - b. "**Documentation**" means user manuals, technical manuals and any other materials that may be provided by Harbortouch, in printed, electronic or other form, that describe the installation, operation, use or technical specifications of the Software.
 - c. "**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

- d. "**Person**" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other legal entity.
 - e. "**Software**" means the Harbortouch HOLO™ POS Program software for which Merchant is acquiring the right to use, subject to the terms and conditions of this Agreement. The Software will allow Merchant to accept customer orders and electronic payments from the internet and the Merchant's Harbortouch POS System.
 - f. "**Term**" has the meaning set forth in Section 10.
 - g. "**Third Party**" means any Person other than Merchant or Harbortouch.
2. **License Grant and Scope.** Subject to Merchant's strict compliance with all terms and conditions of this Agreement, Harbortouch hereby grants to Merchant a non-exclusive, non-transferable, non-sublicensable, limited license during the Term to use, solely by and through its Authorized Users, the Software, subject to all conditions and limitations set forth in this Agreement. This license grants Merchant the right to:
- a. Download and install one (1) copy of the Software on a single Harbortouch POS System(s), as provided by Harbortouch to Merchant under the terms and conditions of the Service Agreement.
 - b. Use and run the Software as properly installed in accordance with this Agreement and the Documentation, solely as set forth in the Documentation and solely for Merchant's internal business purposes. Such use is permitted only on the Harbortouch POS System on which the Software is installed. This license may not be shared or used concurrently on different devices and/or pieces of equipment.
3. **Third-Party Materials.** The Software may include software, content, data or other materials, including related documentation, that are owned by Persons other than Harbortouch and that are provided to Merchant on licensee terms that are in addition to and/or different from those contained in this Agreement ("**Third-Party Licenses**"). Applicable Third-Party Licenses, if any, shall be set forth in the Documentation. Merchant is bound by and shall comply with all Third-Party Licenses. Any breach by Merchant or any of its Authorized Users of any Third-Party License shall also be deemed by Harbortouch to be breach of this Agreement.
4. **Use Restrictions.** Merchant shall not, and shall require its Authorized Users not to, directly or indirectly:
- a. use (including make any copies of) the Software beyond the scope of the license granted under Section 2;
 - b. provide any other Person, including any subcontractor, independent contractor, affiliate or service provider of Merchant with access to or use of the Software;
 - c. copy, modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Software or any part thereof;
 - d. combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;
 - e. reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
 - f. remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices provided on or with the Software, including any copy thereof;
 - g. rent, lease, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason;
 - h. use the Software in violation of (i) any law, regulation or rule; or (ii) any right of a Third-Party; or

- i. use the Software for purposes of competitive analysis of the Software, the development of a competing software product or service or any other purpose that is to Harbortouch's commercial disadvantage.

5. Responsibility for Use of Software.

- a. Merchant is responsible and liable for all uses of the Software through access thereto provided by Merchant, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Merchant is responsible and liable for all actions and failures to take required actions with respect to the Software by its Authorized Users or by any other Person to whom Merchant or an Authorized User may provide access to or use of the Software, whether such access or use is permitted by or in violation of this Agreement. Merchant is responsible and shall comply at all times with all applicable federal, state, and local law, regulations and/or rules, including but not limited to such laws pertaining to the sale of alcohol on the internet.
- b. Merchant is responsible for all content that is publicly displayed or otherwise made publicly available in the course of using HOLO online ordering portal in conjunction with the Software. Merchant understands and agrees that Harbortouch is not responsible for the content posted on the online ordering portal. Merchant agrees that Harbortouch may remove or restrict access to any content made publicly available upon receipt of a take-down notice given pursuant to the terms and conditions of the Digital Millennium Copyright Act and reasonably believed by Harbortouch to be valid. Merchant further understands and agrees that Harbortouch may remove or restrict access to any content that Merchant has made publicly available in the course of using the HOLO online ordering portal that Harbortouch reasonably believes may infringe the copyright of a third party, misrepresents the HOLO POS Program, misuses a Harbortouch trademark or copyright material or is offensive, profane, unlawful, defamatory or obscene at Harbortouch's sole discretion.
- c. Merchant understands that in order to accept orders from the HOLO Online Ordering Portal the Merchant's Harbortouch POS System on which the Software is installed must be turned on and connected to the internet.

6. Maintenance and Support.

- a. Subject to Section 6(c), the license granted hereunder entitles Merchant to the basic software maintenance and support services, as described herein, during the Term.
- b. During the Term of this Agreement Harbortouch shall make commercially reasonable efforts to make available to merchant in a form and manner subject to Harbortouch discretion maintenance and support services. Maintenance and support services will include provision of such updates, upgrades, bug fixes, patches and other error corrections (collectively, "**Updates**") as Harbortouch may make generally available to all licensees of the Software. Harbortouch may develop and provide Updates in its sole discretion, and Merchant agrees that Harbortouch has no obligation to develop any Updates at all or for particular issues. In the event, Harbortouch does provide an Update to the Software, Merchant shall permit Harbortouch to install that Update on Merchant's POS System, which may be done remotely. Notwithstanding the foregoing, Merchant shall at its sole cost and expense, install all Updates within thirty (30) calendar days of the Update being made available to Merchant by Harbortouch. Notwithstanding anything to the contrary contained in this Agreement, Harbortouch, in its sole discretion, reserves the right to not provide support as set forth in this Agreement if the Merchant fails to install the Update in accordance with the terms of this section or to charge Merchant the then current rate for such support.
- c. Merchant further agrees that all Updates will be deemed Software and shall be subject to all terms and conditions of this Agreement. Maintenance and support services do not include any new version or new release of the Software that Harbortouch may issue as a separate or new product,

and Harbortouch may determine whether any issuance qualifies as a new version, new release or Update in its sole discretion.

- d. Harbortouch has no obligation to provide maintenance and support services, including Updates: (i) for any copy of Software for which all previously issued Updates have not been installed by Merchant; or (ii) if Merchant is in breach under this Agreement, or any other agreement Merchant may have with Harbortouch.
- e. Merchant grants Harbortouch access to the Harbortouch POS System so that Harbortouch may install, update, and remove the Software.
- f. Harbortouch reserves the right to change and/or modify the Software at any time in its sole discretion. Changes to the Software shall be described in the appropriate Documentation. Merchant's use of the Software following the posting of any changes and/or modifications shall be deemed by Harbortouch as Merchant's acceptance of such change and/or modification.
- g. Merchant acknowledges that the performance of the Harbortouch HOLO Software is conditioned on Merchant providing, at its sole cost and expense continued and secure wireless network access.

7. Collection and Use of Information.

- a. Merchant acknowledges that Harbortouch may, directly or indirectly through the services of Third Parties, collect and store information, including personally identifiable information and/or transaction related information, regarding Merchant's and Merchant's customer's use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used. Information collected may include, but is not limited to: Merchant's location, items Merchant's customers ordered, number and dollar amount of Merchant's customer's orders, dates and items of sales, and other information obtained as a result of transactions made through the Software.
- b. Harbortouch's use of information collected from Merchant shall be subject to Harbortouch's Privacy Policy, which is accessible at www.harbortouch.com/privacy-policy. Notwithstanding the foregoing, Merchant agrees that Harbortouch may use such information, and share such information with Third Parties, for any purpose related to any use of the Software by Merchant or Merchant's customers, including but not limited to:
 - i. improving the performance of the Software or developing Updates;
 - ii. verifying Merchant's compliance with the terms of this Agreement and enforcing the Harbortouch's rights, including all Intellectual Property Rights in and to the Software; and
 - iii. as market research and/or for commercial marketing purposes.

8. **Intellectual Property Rights.** Merchant acknowledges and agrees that the Software is provided under license, and not sold, to Merchant. Merchant does not acquire any ownership interest in the Software under this Agreement, or any other rights thereto other than to use the same in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement. Harbortouch, and its licensors and service providers, reserve and shall retain their entire right, title and interest in and to the Software and all Intellectual Property Rights arising out of or relating to the Software, except as expressly granted to the Merchant in this Agreement. Merchant shall safeguard all Software from infringement, misappropriation, theft, misuse or unauthorized access. Merchant shall promptly notify Harbortouch if Merchant becomes aware of any infringement of the Harbortouch's Intellectual Property Rights in the Software and fully cooperate with Harbortouch in any legal action taken by Harbortouch to enforce its Intellectual Property Rights. Harbortouch shall be solely responsible for the investigation, defense, settlement and discharge of any claim that the Software infringes any Third Party's Intellectual Property Rights. Should the Software be found to be infringing, Merchant's sole remedy will be to cease using the Software or use a non-infringing version of the Software should Harbortouch provide one.

Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Licensee or any Third Party any Intellectual Property Rights or other right, title, or interest in or to any of the Software or documentation or any other Harbortouch property.

9. **Fees and Payment.**

- a. **Thirty-Day Trial Period.** Merchant will have free access to use the Software for a thirty (30)-calendar day period beginning on the date the Merchant accepts the terms of this Agreement ("**Trial Period**").
- b. **Setup Fee.** Merchant shall be charged a setup fee equal to Ninety Nine Dollars (\$99.00) ("**Setup Fee**").
- c. **Monthly License Fee.** After the expiration of the Trial Period merchant shall be charged a minimum Twenty Dollar (\$20.00) license fee per month ("**Monthly License Fee**"). Pricing may vary based on negotiated rates.
- d. **Transaction Fee.** During the Term of this Agreement (including the Trial Period) Merchant shall receive fifty (50) free online order transactions per month ("**Free Transaction Quota**"). If Merchant exceeds the Free Transaction Quota, then Merchant shall pay a minimum Fifty Cents (\$.50) per transaction for each online order transaction placed above and beyond the Free Transaction Quota ("**Transaction Fee**"). For the purposes of this Agreement, a transaction shall occur when a successful order is generated through Merchant's HOLO online ordering portal and transmitted to the Merchant's Harbortouch POS System. Pricing may vary based on negotiated rates.
- e. **Processing Fees.** Notwithstanding anything to the contrary in this Agreement, Merchant shall be responsible for all processing fees, charges and rates for accepting electronic transactions through the Software. Processing fees, charges and rates are governed by the Processing Agreement.
- f. **Chargebacks.** Merchant is responsible for all chargebacks related to Merchant's customer's use of electronic payment transactions through Merchant's HOLO online ordering portal. The collection of chargebacks shall be governed by the Processing Agreement.
- g. **Taxes.** All fees and other amounts payable by Merchant under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Merchant is responsible for all sales, service, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Merchant hereunder.
- h. **Payment.** Harbortouch will collect the Setup Fee, Monthly License Fee, and Transaction Fee from the Merchant by debiting, on a monthly basis, the Merchant's bank account, as designated under the Processing Agreement and/or the Service Agreement.

Merchant's failure to use the Software during the term of this Agreement shall not relieve Merchant of any of its obligations, including without limitation the obligation to pay the Setup Fee and Monthly License Fee.

10. **Term and Termination.**

- a. This Agreement and the license granted hereunder shall remain in effect until terminated as set forth herein (the "**Term**").
- b. Merchant may terminate this Agreement at any time by notifying Harbortouch, in writing, of Merchant's intent to terminate the Agreement by sending notice to 2202 N. Irving Street, Allentown, PA 18109, attn. Harbortouch HOLO Group or by email at HOLO@harbortouch.com.

- c. Harbortouch may terminate this Agreement, effective upon written notice to Merchant, if Merchant, breaches this Agreement and such breach remains uncured thirty (30) calendar days after Harbortouch provides written notice thereof.
- d. Harbortouch may terminate this Agreement, effective immediately, if:
 - i. Harbortouch discontinues or stops providing the Software and/or the Harbortouch Online Ordering POS Program;
 - ii. If Merchant breaches the Processing Agreement and/or the Service Agreement; or
 - iii. If Merchant files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.
- e. Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and Merchant shall cease using and destroy all copies of the Software. No expiration or termination shall affect Merchant's obligation to pay all Monthly License Fee and Transaction Fees that may have become due before such expiration or termination, or entitle Merchant to any refund.

11. **Disclaimer of Warranty.** THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, HARBORTOUCH, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, HARBOROTUCH PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SOFTWARE WILL MEET THE MERCHANT'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

12. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

- a. IN NO EVENT WILL HARBORTOUCH OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO MERCHANT OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY OR INABILITY TO USE THE SOFTWARE, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT HARBORTOUCH WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. IN NO EVENT WILL HARBORTOUCH'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR

IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO HARBORTOUCH PURSUANT TO THIS AGREEMENT FOR THREE (3) MONTHS OF THE SPECIFIC SERVICES, THAT IS THE SUBJECT OF THE CLAIM.

- c. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF THE MERCHANT'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

13. **Trademarks.** Harbortouch may use Merchant's name and trademarks as part of Harbortouch's marketing efforts. Harbortouch shall cease using Merchant's trademarks upon the termination of this Agreement.

14. **Miscellaneous.**

- a. **Governing Law.** This Agreement is governed by and construed in accordance with the internal laws of the State of Pennsylvania without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Pennsylvania. Any legal suit, action or proceeding arising out of this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Pennsylvania in each case located in the city of Allentown and the County of Lehigh, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
- b. **Limitation of Time to File Claims.** ANY CAUSE OF ACTION OR CLAIM MERCHANT MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SOFTWARE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.
- c. **Agreement to Arbitrate.** Agreement to Arbitrate. (a) Harbortouch and Merchant agree to arbitrate all disputes and claims between each other or its affiliates, subsidiaries, successors, or assigns. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to: (i) claims arising out of or relating to any aspect of the relationship between the parties, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; (ii) claims that arose before this or any prior agreement (including, but not limited to, claims relating to advertising); (iii) claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and (iv) claims that may arise after the termination of this Service Agreement. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Office of the Comptroller of the Currency. Such agencies can, if the law allows, seek relief against us on your behalf. **You agree that, by entering into Agreement and this agreement to arbitrate, you and Harbortouch are each waiving the right to a trial by jury or to participate in a class action.** This arbitration provision shall survive termination of the Agreement. (b) A party who intends to seek arbitration must first send to the other, by certified mail or courier service a written Notice of Dispute ("Notice"). The Notice to Harbortouch should be addressed to: General Counsel, Harbortouch 2202 N. Irving Street, Allentown, PA 18109 ("Notice Address"). The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought ("Demand"). If Harbortouch and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or Harbortouch may commence an arbitration proceeding. (c) The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this

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

- d. **Force Majeure.** Harbortouch will not be responsible or liable to Merchant, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning or Licensee equipment, loss and destruction of property or any other circumstances or causes beyond Harbortouch's reasonable control.
- e. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when received by the addressee if sent by a nationally recognized overnight courier; (b) on the date sent by facsimile or e-mail; or (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.
- f. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between Merchant and Harbortouch with respect to the subject matter contained herein, and supersedes all prior and

contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

- g. **Assignment.** Merchant shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Harbortouch's prior written consent, which consent Harbortouch may give or withhold in its sole discretion. Any purported assignment, delegation or transfer in violation of this Section is void. Harbortouch may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Merchant's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- h. **Third Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- i. **Amendment and Modification.** Merchant may not amend, modify or supplement this Agreement, unless in writing signed by each Party. Harbortouch may amend any part(s) of this Agreement upon thirty (30) calendar days written notice to Merchant. Merchant's use of the Software following the thirty (30) calendar day period following such notice shall be deemed by Harbortouch as Merchant's acceptance of the amendment. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- j. **Illegality.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- k. **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.