



HARBORTOUCH

EXHIBIT A

MERCHANT NAME ("Merchant"):		DATE:
MERCHANT ADDRESS:		
CITY:	STATE:	ZIP:
MERCHANT PHONE:	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: _____		

ENROLLMENT OPTIONS

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

I. BASE PACKAGE

1 FIVE (5) WIRE TOUCH SCREEN MONITOR WITH MAGNETIC STRIPE READER
1 HARBORTOUCH PROCESSING STATION
1 CASH DRAWER
1 RECEIPT PRINTER
1 BAR CODE READER (RETAIL MERCHANT ONLY)
1 CUSTOMER DISPLAY POLE (RETAIL MERCHANT ONLY)
25 SERVER CARDS (HOSPITALITY & PIZZERIA MERCHANTS ONLY)
PRICE: NUMBER OF SYSTEMS: _____ x \$59.00/month
TOTAL PRICE: \$ _____ /month

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

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

PRODUCT/SERVICE	QUANTITY	MONTHLY COST	TOTAL COST
Remote Printer		\$7.00	\$
Video Kitchen Display System		\$28.00	\$
Wireless Inventory Scanner		\$28.00	\$
Advance Wiring Package (per cable drop)		\$8.00	\$
TOTAL OPTIONAL ADD-ONS:			\$ /month
TOTAL MONTHLY SERVICE FEE (SECTION I + SECTION II):			\$ /month

III. OPTIONAL ACCESSORY PURCHASES

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

PRODUCT/SERVICE	QUANTITY	PRICE	TOTAL COST
Debit Pin-Pad		\$89.00	\$
Cash Till		\$14.95	\$
Surge Protector/Battery Back-Up		\$69.00	\$
50 Server Cards		\$49.95	\$
TOTAL OPTIONAL ACCESSORIES:			\$

MERCHANT IS ENTITLED TO ONE (1) STANDARD CABLE DROP UPON ENROLLMENT OF THE BASE PACKAGE. MERCHANT AUTHORIZES HARBORTOUCH, IN ITS REASONABLE DISCRETION, TO INSTALL ADDITIONAL CABLE LINES THAT DO NOT FIT WITHIN THE DEFINITION OF A STANDARD CABLE DROP. MERCHANT SHALL BE BILLED TWO HUNDRED FORTY NINE (\$249.00) DOLLARS FOR EACH CABLE DROP AS FURTHER DETAILED IN SECTION 2.1 (C) OF THE SERVICE AGREEMENT. MERCHANT SHALL BE DEBITED THE AMOUNT FOR ADDITIONAL CABLE DROPS AT THE TIME OF THE NEXT BILLING.

MERCHANT'S INITIALS: _____

ACH Authorization: The service charges as specified in Exhibit A shall be debited from Merchant's account upon the execution of this Agreement and then monthly on the 1st of every month. All other charges payable hereunder shall be debited during the month in which they have been incurred. Authorized Merchant Representatives signature below authorizes Harbortouch, a division of United Bank Card, Inc. ("UBC"), its affiliates, subsidiaries, designated assignees, or third party providers, to initiate ACH transfer entries to credit and/or debit the account identified in the voided check provided to Harbortouch for Monthly Service Fees as set forth in Exhibit A. This authorization shall remain in effect unless and until UBC receives written notification from Merchant that this authorization has been terminated in such time and manner to allow UBC to act.

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

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

SIGNATURE _____
DATE

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

AGREED AND ACCEPTED:

PRINCIPAL SIGNATURE _____
PRINT NAME

BY THEIR EXECUTION BELOW, THE UNDERSIGNED AGREES TO ABIDE BY THE SERVICE AGREEMENT AND ITS EXHIBITS, THE AGREEMENT CONSISTS OF THE SERVICE AGREEMENT TERMS AND CONDITIONS, EXHIBITS (ENROLLMENT OPTIONS AND MERCHANT AGREEMENT), AND MERCHANT ACKNOWLEDGES RECEIPT OF SERVICE AGREEMENT TERMS AND CONDITIONS AND MERCHANT AGREEMENT TERMS AND CONDITIONS, AT THE TIME OF SIGNING. MERCHANT WARRANTS THAT THE INFORMATION PROVIDED TO HARBORTOUCH IS COMPLETE AND ACCURATE.

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

AGREED AND ACCEPTED: MERCHANT LEGAL NAME: _____

MERCHANT SIGNATURE _____
PRINT NAME

Harbortouch® Point-of-Sale ("POS") System Service Agreement ("Service Agreement")

TERMS AND CONDITIONS

THIS SERVICE AGREEMENT is made on the date as set forth above, by and between Harbortouch Financial, LLC ("Harbortouch"), a division of United Bank Card, Inc., with its principal place of business at 53 Frontage Road, Perryville Corporate Park, Building III, Hampton, NJ 08827 and Merchant with its principal place of business located at the address as set forth in Exhibit A.

WHEREAS, Harbortouch 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 Harbortouch agrees to supply such service to the Merchant on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows.

1. Definitions

Equipment shall mean any products listed in Exhibit A as a Base Package or Add-Ons (Section I and II).

Merchant Agreement shall mean the separate agreement between United Bank Card, Inc. ("UBC") 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 listed in Exhibit A.

Software shall mean proprietary Harbortouch Hospitality, Harbortouch Retail, and any additional Harbortouch software developed, enhanced, or revised from time to time contained in the Equipment.

2. Harbortouch's Obligations

2.1 Service of Equipment: So long as Merchant is not in default of this Agreement, Harbortouch shall, for the monthly service charges set forth in Exhibit A hereto, provide service to the Merchant Location as set forth in this Section:

(a) **Technical Support:** Merchant shall be entitled to twenty-four (24) hours a day, seven (7) days a week remote technical support for the Equipment.

(b) **Customization:** Merchant shall be entitled to custom development and configuration of the Equipment. Such customization is done with the assistance of the Merchant who must provide information requested by Harbortouch. Upon completion of Equipment customization Harbortouch shall provide Merchant with an online presentation of the Equipment. Upon completion of this presentation, or if the Merchant declines to participate in such 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 Harbortouch to record such verification and agrees that no Equipment shall be shipped prior to such verification. Any additional customization after the Equipment has been shipped to the Merchant is expressly excluded from this Agreement. Additional fees may apply. HARBORTOUCH DOES NOT WARRANT THAT CUSTOMIZATION WILL BE FREE FROM DEFECTS OR MISTAKES. HARBORTOUCH EXPRESSLY DISCLAIMS AND MERCHANT AGREES TO HOLD HARBORTOUCH HARMLESS FOR ANY ERRORS IN THE EQUIPMENT ONCE THE MERCHANT HAS COMPLETED VOICE VERIFICATION.

(c) **Installation:** Merchant shall be entitled to one (1) on-site installation of the Equipment 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 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 HARBORTOUCH 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 AS SET FORTH ABOVE AND FOR EACH CABLE DROP AFTER THE STANDARD CABLE DROP.

MERCHANT SHALL BE DEBITED THE AMOUNT FOR ADDITIONAL INSTALLATION AT THE TIME OF THE NEXT BILLING.

(d) **Repair/Replacement:** Upon notification either verbal or written, of malfunction of any Equipment covered under this Agreement, Harbortouch shall provide remote support to determine if the part is defective and, if so, at Harbortouch'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 Harbortouch. 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 2.2 shall result in additional charges for the service of Equipment.

2.2 Non-Standard Services: Harbortouch 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) (i) the failure of Merchant to continually maintain the Merchant Location in conformance with commercially reasonable standards; (ii) impairments in the performance of the Equipment resulting from changes in the design of the Equipment made by Merchant or mechanical, electrical, or electronic interconnections made by Merchant; (iii) damage caused by accidents, natural disasters or the negligence of, or improper use or misuse of, the Equipment by Merchant; (iv) damage or necessity of repair resulting from unauthorized maintenance by Merchant or any third party other than Harbortouch or its authorized representative; (v) damage or repair necessitated as a result of relocation of the Equipment; (vi) change in laws or Association rules that require service, repair, or replacement above normal day to day maintenance; (vii) due of any third party hardware or software in conjunction with the use of the Equipment without Harbortouch's express written consent or (viii) theft of the Equipment.

3. Merchant Obligations

3.1 Notice of Equipment Failure: Merchant shall notify Harbortouch's personnel immediately upon Equipment failure or malfunction and shall allow Harbortouch full and free access to the Equipment and the use of necessary data communications facilities and equipment at no charge to Harbortouch, 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 a 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 Merchant's Maintenance Efforts: 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 Harbortouch; shall not at any time affix, and shall not remove the Equipment from the Merchant Location without the written consent of Harbortouch, which shall not be unreasonably withheld.

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 Harbortouch immediately if Equipment is lost, destroyed, stolen or taken by any other person. HARBORTOUCH DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT, AFTER THE INITIAL INSTALLATION OF THE EQUIPMENT OR ANY SOFTWARE CONTAINED THEREIN, THAT THE EQUIPMENT, SOFTWARE CONTAINED THEREIN, OR CUSTOMER'S DATA WILL REMAIN VIRUS-FREE. MERCHANT WAIVES ANY CLAIMS HEREUNDER AGAINST HARBORTOUCH TO THE EXTENT ARISING FROM MERCHANT'S FAILURE TO HAVE OR MAINTAIN CURRENT VIRUS PROTECTION, OR TO THE EXTENT ARISING AS A RESULT OF A FAILURE OR BREACH OF CUSTOMER'S SECURITY FOR ITS SYSTEMS OR DATA, OR AS A RESULT OF ANY UNAUTHORIZED ACCESS TO MERCHANT'S SYSTEMS.

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 United Bank Card, Inc.. Failure to do so shall result in Harbortouch'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 Harbortouch within fifteen (15) days.
- (b) upon receiving replacement Equipment that it shall return any Equipment which it has requested being replaced to Harbortouch within fifteen (15) days of receipt of the substitute Equipment.
- (c) to the extent permitted by applicable law, without demand or legal process, Harbortouch, 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 Harbortouch'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 United Bank Card, Inc.. Harbortouch 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) Merchant grants Harbortouch, its affiliates, subsidiaries, successors, and assigns, Automated Clearing House ("ACH") Authorization to credit and debit its demand deposit account and permission to make a credit inquiry in order to obtain a consumer credit report as set forth in Exhibit A; (b) Harbortouch 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 Harbortouch.

4.3 Adjustments: Harbortouch may adjust the monthly service charges in Exhibit A upon thirty (30) days written notice in accordance with the provisions of Section 10.6 hereof.

4.4 Taxes: Merchant shall pay (or reimburse Harbortouch), in addition to the charges for the services specified herein and as a separate item, all taxes (exclusive of Harbortouch 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 Ground Shipping ("Courier"). Merchant authorizes Harbortouch to debit the amount for shipping at the time the unit ships. Harbortouch shall have no liability for failure of Equipment to reach its destination in a timely manner once it has delivered the Equipment to Courier.

5. Limitation of Remedies and Liability

5.1 Scope of Damages.

HARBORTOUCH 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 DISCLAIMER OF WARRANTIES AND LIMITATION OF WARRANTIES:

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, HARBORTOUCH AND ITS AFFILIATES MAKE NO WARRANTIES, EXPRESS OR IMPLIED AS TO ANY HARBORTOUCH 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 HARBORTOUCH, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

HARBORTOUCH 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.

HARBORTOUCH SHALL NOT BE LIABLE FOR ANY COSTS OR FOR PERFORMING ANY SERVICES HEREUNDER ARISING IN CONNECTION WITH MERCHANT'S NEGLIGENCE, ABUSE, MISUSE, OR FAILURE TO PERFORM ROUTINE MAINTENANCE AND STANDARD OPERATING PROCEDURES.

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, naming Harbortouch as a loss payee on public liability insurance, in amounts acceptable to Harbortouch, naming Harbortouch as an additional insured. Merchant must provide Harbortouch 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, Harbortouch may obtain insurance from an Insurer of its choosing in such forms and amounts as Harbortouch deems reasonable to protect its interests. Such insurance covers the Equipment and Harbortouch; it does not name the Merchant as the insured. Merchant agrees to pay Harbortouch 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 Harbortouch or its agents, affiliates or assigns, and billing and processing fees; each of which may generate a profit for

Harbortouch and its agents, affiliates, and assigns. Unless Merchant provides satisfactory evidence of insurance by the due date set forth herein, Harbortouch shall pay such insurance by debiting Merchant's account under the withdrawal provision in this Agreement. Harbortouch shall discontinue billing insurance charges upon receipt of satisfactory evidence of insurance. Merchant agrees to arbitrate any dispute with Harbortouch or Harbortouch's agents, affiliates, or assigns regarding insurance or insurance charges under the rules of the American Arbitration Association in Newark, New Jersey; provided however, such agreement does not authorize class arbitration.

7. **Term:** This Agreement shall become effective as of the date accepted and signed by Harbortouch and shall continue for an initial term of five (5) years from the Commencement Date, unless earlier terminated pursuant to this section. This Agreement shall auto renew for a period of four (4) years at the end of any term unless the terminating party provides sixty (60) days' prior written notice to the non-terminating party in accordance with the provisions of 10.6 hereof of its intent to terminate the Agreement prior to the end of the then current term.
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, Harbortouch shall be entitled to either (a) immediately terminate this Agreement, or (b) direct United Bank Card, Inc. to withhold Merchant processing funds in the amount which it is in default for which Harbortouch may immediately apply to payment of the fee 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, Harbortouch may terminate this Agreement or exercise its rights as set forth in this Section.
 - 8.3 **Survival of Merchant's Obligations:** Customer'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 Harbortouch to debit this fee from its account which may be done within thirty (30) days of termination.
9. **Force Majeure:** Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.
10. **General Terms and Conditions**
 - 10.1 **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 Harbortouch. Harbortouch 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.
 - 10.2 **Ownership:** The Equipment is, and will remain at all times, the exclusive property of Harbortouch, its affiliates, successors, or assigns. Harbortouch 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 Harbortouch, at Merchant's expense, to cause this Service Agreement or any statement or any other instrument in respect to this Agreement showing Harbortouch'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 Harbortouch from any loss caused thereby.
 - 10.3 **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 Harbortouch. Merchant shall not, without Harbortouch's prior written consent, disclose any of the Proprietary Information of Harbortouch, 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 Harbortouch 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.
 - 10.4 **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 Harbortouch. This Agreement is not construed as granting the Merchant any intellectual rights or intellectual license in any intellectual property which Harbortouch 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 Harbortouch provided Equipment or Software.
 - 10.5 **Amendments:** This Agreement may be amended by Harbortouch, its affiliates, or assigns, upon thirty (30) days written notice. Merchant's continued use of the Equipment shall be acceptance of such amended terms.
 - 10.6 **Notices:** Notices permitted or required to be given hereunder shall be deemed sufficient if given by registered or certified air mail, postage prepaid, return receipt requested, addressed to the respective addresses or the parties as first above written or at such other addresses as the respective parties may designate by like notice from time to time. Notices so given shall be effective as of the date stamped on the receipt.
 - 10.7 **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.
 - 10.8 **Governing Law and Forum:** Merchant and Harbortouch acknowledge and agree that this Agreement and Guaranty contained herein, was, and shall be deemed to have been made and delivered in Hunterdon County, New Jersey. The laws of the State of New Jersey, 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 Guaranty 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 Essex County, New Jersey, 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 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.

- 10.9 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.
- 11. Independent Contractor:** The parties intend that 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 Customer and is not entitled to participate in any pension plans, or in bonus, stock, or similar benefits that Customer provides for its employees.
- 12. 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.