

## POSABIT POS SOFTWARE LICENSE AGREEMENT

This POSaBIT POS Software License Agreement (this “**Agreement**”) is entered into as of July 22, 2022 (“**Effective Date**”) between POSaBIT, Inc., a Washington corporation with a business address at 11915 124th Ave NE, Kirkland, Washington 98033 (“**POSaBIT**”) and [Redacted – Confidential Information] (“**Licensee**”). POSaBIT and Licensee may be referred to herein individually as a “**Party**,” and collectively as the “**Parties**.”

### 1. Definitions.

**1.1 “Affiliate”** means any entity that currently or in the future Controls, is Controlled by, or is under common Control with a Party. “**Control**” for purposes of this definition means direct or indirect ownership of 50% or more of the voting securities or interests in an entity. An entity is an Affiliate only so long as such Control exists.

**1.2 “Acceptance Defect”** means any failure of the Licensed Technology provided by POSaBIT to Licensee for inspection and acceptance by Licensee pursuant to Section 2.1 to substantially meet the applicable Acceptance Criteria.

**1.3 “Customer”** means an individual who purchases products directly from a Merchant using the Licensee POS Software.

**1.4 “Error”** means any failure of the POSaBIT POS Source Code to substantially conform with the Specifications.

**1.5 “Excluded License Terms”** means license terms (such as those applicable to “Open Source” software) that require that computer code be: (a) disclosed in source code form to third parties; (b) licensed to third parties for the purpose of making derivative works; (c) redistributable to third parties at no charge; or (d) not permitted to be licensed to third parties for commercial use.

**1.6 “External Documentation”** means any Related Documentation that is identified by POSaBIT as being Merchant or Customer-facing documentation.

**1.7 “FOSS”** means any code that is distributed as “free software” (as defined by the Free Software Foundation), “open source software” (meaning Software distributed under any license approved by the Open Source Initiative as set forth at [www.opensource.org](http://www.opensource.org)) or under a similar licensing or distribution model (including under a GNU General Public License, GNU Lesser General Public License, GNU Affero General Public License, Mozilla Public License, BSD License, Artistic License, Netscape Public License, Sun Community Source License, Sun Industry Standards License (SISL), Apache License and Business Source License).

**1.8 “Intellectual Property Rights”** means all copyrights, trademarks, trade secrets, patents, patent applications, moral rights, and all other intellectual property rights.

**1.9 “Internal Documentation”** means all Related Documentation that is not External Documentation.

**1.10 “Licensed Technology”** means, collectively, the POSaBIT POS Source Code and Related Documentation.

**1.11 “Licensee POS Software”** means a point of sale software solution made available by Licensee (directly or via any Licensee authorized sublicensee) to or for use by Merchants or Customers that includes any portion of the POSaBIT POS Source Code or any object code compiled from such source code.

**1.12 “Merchant”** means a person or entity that uses the Licensee POS Software to effect or otherwise support sales of goods or services to Customers.

**1.13 “Modifications”** means any derivative works, improvements, enhancements, extensions and other modifications to the Licensed Technology.

**1.14** [Redacted – Commercially Sensitive Information]

**1.15** [Redacted – Commercially Sensitive Information]

**1.16** [Redacted – Commercially Sensitive Information]

**1.17** [Redacted – Commercially Sensitive Information]

**1.18 “POS Device”** means a Customer-facing physical device (e.g., a payment terminal) or a cloud based point of sale system directly accessible by Customers via the Internet, used for facilitating point of sale transactions. [Redacted – Commercially Sensitive Information]

**1.19 “POSaBIT POS Software”** means the POSaBIT software solution described in Schedule 1.19 to this Agreement. For clarity, the POSaBIT POS Software does not include the [Redacted – Commercially Sensitive Information], Referenced FOSS or the Third Party Dependencies.

**1.20 “POSaBIT POS Source Code”** means the human-readable source-code version of (1) the POSaBIT POS Software (in the form existing as of the Effective Date) and any changes or modifications thereto developed by POSaBIT during the delivery, inspection and correction process described in Section 2.1, and (2) and any Update or Resolution, in each case as provided by POSaBIT to Licensee in accordance with this Agreement.

**1.21 “Related Documentation”** means (a) POSaBIT’s current (as of the Effective Date) manuals, specifications, and technical documentation for the POSaBIT POS Software, (b) any modifications to the items described in subsection (a) that are created by POSaBIT during the delivery, inspection and correction process described in Section 2.1, (c) POSaBIT’s know-how relating to the POSaBIT POS Software that exists in written form as of the Effective Date (or, with respect to any Update, that exists in written form as of the date that the Update is made available to Licensee) that is necessary or otherwise reasonably required for POSaBIT to develop, operate, and maintain the POSaBIT POS Software; and (d) any Supplemental Documentation.

**1.22 “Specifications”** means POSaBIT’s current (as of the Effective Date) specifications for the operation of the POSaBIT POS Source Code, in combination with the Referenced FOSS and Third Party Dependencies, including the installation and deployment procedures and descriptions provided by POSaBIT in connection with the POSaBIT POS Source Code, as modified from time to time by the mutual written agreement of the Parties or by mutual written agreement of the Parties to account for any Update provided to Licensee under this Agreement.

**1.23 “Supplemental Documentation”** means the documentation described on Schedule 1.23 to this Agreement.

**1.24 “Third Party Dependencies”** means the software dependencies (including software services) provided by third parties that are listed in Schedule 1.24, which are (as of the Effective Date) used by POSaBIT in making available the POSaBIT POS Software to POSaBIT’s customers.

## **2. License Grant; Ownership of Modifications.**

### **2.1 Delivery.**

(a) POSaBIT shall:

(i) deliver a copy of the Licensed Technology to Licensee promptly but no later than five (5) days after the Effective Date in a format mutually agreed-upon by the Parties (with the Supplemental Documentation being provided under subsection (iv) below);

(ii) if requested by Licensee during the Inspection Period, reasonably assist Licensee in locating and implementing the Referenced FOSS (as defined below) and Third Party Dependencies and deploying the POSaBIT POS Source Code, in combination with the Referenced FOSS and Third Party Dependencies, in the Licensee Hosting Environment (as defined below) at no charge;

(iii) deliver a copy of the Specifications to Licensee promptly but no later than five (5) days after the Effective Date; and

(iv) deliver a copy of the Supplemental Documentation to Licensee as soon as practicable but no later than thirty (30) days after the Acceptance Date.

(b) Promptly after delivery of the applicable Licensed Technology pursuant to Section 2.1(a)(i), Licensee will: (i) obtain the Referenced FOSS and Third Party Dependencies (if not yet obtained by Licensee); (ii) inspect the delivered Licensed Technology and the Referenced FOSS and Third Party Dependencies to confirm that they (A) constitute in all material respects the relevant POSaBIT and third party software, services and other technology that Licensee reviewed and conducted diligence on during the first quarter of 2022, and (B) are in a form that would allow Licensee to stand-up and perform the functionality of the POSaBIT POS Source Code in a Licensee cloud hosting environment that is substantially similar to POSaBIT’s cloud hosting environment for the POSaBIT POS Software (the “**Licensee Hosting Environment**”); (iii) deploy and test and evaluate the POSaBIT POS Source Code, in combination with the Referenced FOSS and Third Party Dependencies, in the Licensee Hosting Environment to determine whether the Licensed Technology performs substantially in accordance with the Specifications; and (iv) evaluate the POSaBIT POS Source Code to confirm that it does not include any FOSS licensed under Excluded License Terms other than those included in the Initial FOSS List (as defined below) (collectively, the “**Acceptance Criteria**”). Licensee agrees to follow the installation and deployment procedures and descriptions provided by POSaBIT in the Specifications in connection with the POSaBIT POS Source Code, the Referenced FOSS, and the Third Party Dependencies. To the extent that Licensee wishes to deviate from any of the items described in the preceding sentence, such deviation must be preapproved by POSaBIT in writing, such approval not to be unreasonably withheld, conditioned, or delayed. POSaBIT will include all known Errors in the POSaBIT POS Software as of the Effective Date in the Related Documentation to be provided to Licensee together with the delivery of the POSaBIT POS Source Code. For the avoidance of doubt, an Acceptance Defect also includes all such known Errors that constitute P1 or P2 (as defined in Schedule 3.2) Errors. Licensee will notify POSaBIT within thirty (30) days of POSaBIT’s delivery of the Licensed Technology (“**Inspection Period**”) whether the Acceptance Criteria has been met or there is an Acceptance Defect. The delivered Licensed Technology shall be accepted as of the earliest of the date that Licensee confirms in writing to POSaBIT within the Inspection Period (or any Acceptance Defect Remediation Period (as defined below)) that the Acceptance Criteria has

been met, or at the end of the Inspection Period (or any Acceptance Defect Remediation Period) if Licensee has failed to notify POSaBIT within Inspection Period (or any Acceptance Defect Remediation Period) whether the Acceptance Criteria has been met or there is an Acceptance Defect (the date of such acceptance, the “**Acceptance Date**”).

(c) If there is an Acceptance Defect and Licensee notifies POSaBIT of such Acceptance Defect within the Inspection Period and prior to any Acceptance Date, and provides evidence reasonably supporting its position, the Parties will meet to discuss resolution of this issue within thirty (30) days of the date that POSaBIT received notice of the Acceptance Defect (the “**Acceptance Defect Remediation Period**”), POSaBIT will promptly correct the Acceptance Defect, and the process described in Section 2.1(b) shall be repeated upon POSaBIT’s further delivery of the Licensed Technology (with all such activities to be completed by the Parties prior to the end of the Acceptance Defect Remediation Period). Any disagreement between the Parties over the presence of an Acceptance Defect asserted by Licensee will be promptly escalated by the Parties to their respective senior management for review and resolution during the applicable Acceptance Defect Remediation Period. In the event that after POSaBIT’s redelivery of the Licensed Technology pursuant to this Section 2.1 following the initial Acceptance Defect remediation process described in the preceding two sentences, there is a continuing Acceptance Defect and Licensee rejects the Licensed Technology due to such Acceptance Defect, Licensee may request that POSaBIT correct such Acceptance Defect by providing notice to POSaBIT prior to the conclusion of the initial Acceptance Defect Remediation Period, which notice will provide evidence reasonably supporting Licensee’s position. In such event, the Parties will repeat the remediation process described in the first two sentences of this Section 2.1(c) for a second Acceptance Defect Remediation Period. If Licensee does not make such request to POSaBIT prior to the conclusion of the initial Acceptance Defect Remediation Period, or if following the second Acceptance Defect remediation process there is a continuing Acceptance Defect that is not resolved by the end of the second Acceptance Defect Remediation Period, then this Agreement will automatically terminate unless the Parties mutually agree to extend such Acceptance Defect Remediation Period. For the avoidance of doubt, the length of the Inspection Period and the two (2) Acceptance Defect Remediation Periods described in this Section 2.1, in the aggregate, may not exceed ninety (90) days from the date of POSaBIT’s delivery of the Licensed Technology pursuant to Section 2.1(a)(i) (excluding any period of time during which POSaBIT is correcting any Acceptance Defects and redelivering the Licensed Technology as required under this Section 2.1), without the mutual agreement of the Parties.

(d) In the event of any automatic termination of this Agreement pursuant to Section 2.1(c), upon Licensee’s performance of its obligations set forth in Section 11.5(c), POSaBIT shall promptly refund to Licensee (i) the entire Training and Onboarding Services Fee, and (ii) 75% of the Signing Fee (i.e., \$225,000), in each case, to the extent that such fees were previously paid by Licensee to POSaBIT pursuant to Section 6.1.

(e) In connection with delivery and inspection process described above in this Section 2.1, the Parties will mutually review the Specifications provided by POSaBIT and agree in writing to any modifications to the Specifications.

## **2.2 License.**

(a) **License Grant.** Subject to the terms and conditions of this Agreement, POSaBIT hereby grants to Licensee, effective as of the Acceptance Date, a non-exclusive, perpetual, irrevocable (unless terminated in accordance with Section 11), sublicensable (as provided in Section 2.2(b)), non-transferable (except as permitted under Section 14.7), worldwide right and license under and to the Licensed Technology and all of POSaBIT’s Intellectual Property Rights therein, to do the following: (i) compile the POSaBIT POS Source Code to generate binaries for the Licensee POS Software; (ii) create or prepare

Modifications; (iii) integrate and combine the POSaBIT POS Source Code with other software, in each case to develop the Licensee POS Software, (iv) use, reproduce, test, support and maintain the Licensed Technology in connection with the Licensee POS Software; and (v) otherwise reproduce, distribute, display, perform (publicly or otherwise), or otherwise make available, and make, have made, import, sell, offer to sell, and use the Licensed Technology in connection with the Licensee POS Software; provided that Licensee may not distribute, display, publicly perform, or otherwise make available, sell, or offer to sell any portion of the POSaBIT POS Source Code in source code form, or any portion of the Internal Documentation, to any third party, except to Affiliates and Authorized Personnel in accordance with Sections 2.2(b) and 8.5 below.

**(b) Sublicensing.**

**(i)** The license rights described in Section 2.1(a) above are sublicensable to Affiliates of Licensee and to their respective Authorized Personnel solely if such license rights are exercised on Licensee's or its Affiliates' behalf and for the purposes and subject to the terms set forth in Section 8.5. Licensee will remain responsible for (1) compliance by an Affiliate with the terms of this Agreement to the same extent and in the same manner as Licensee, (2) any breach or noncompliance of the terms of the Agreement by any Affiliate, and (3) obligations, services and functions performed by any Affiliate acting on its behalf to the same extent as if those obligations, services and functions were performed by Licensee. Upon POSaBIT's request, Licensee will provide POSaBIT with a then-current list of all Affiliates that are sublicensees under this Section 2.2(b)(i). Notwithstanding anything in this Section 2.2(b) to the contrary, only Licensee, and not any Affiliate of Licensee, may assert actions, claims, rights, remedies and privileges against POSaBIT under this Agreement.

**(ii)** The license rights described in subsection 2.1(a)(v) above are only sublicensable by Licensee and its Affiliates to Merchants, Customers, resellers and distributors of Licensee and its Affiliates, in the case of the POSaBIT POS Source Code, in binary form, and in the case of the Related Documentation, only the External Documentation. Licensee shall remain liable at all times for any failure of a sublicensee to comply with the applicable terms of this Agreement.

**2.3 Restrictions.** Licensee acknowledges that the POSaBIT POS Source Code and its structure and organization constitute valuable trade secrets of POSaBIT. Accordingly, Licensee agrees that it shall not: (a) incorporate, modify, or combine the POSaBIT POS Source Code with any other computer code in a manner which would subject any portion of the POSaBIT POS Source Code to Excluded License Terms; (b) except as otherwise permitted in this Agreement, license, sublicense, sell, lease, rent, loan, market, distribute, disclose or otherwise transfer the POSaBIT POS Source Code to any third party; (c) except as otherwise permitted in this Agreement, remove, alter, or obscure any confidentiality or proprietary notices (including copyright and trademark notices) of POSaBIT on the POSaBIT POS Source Code; (d) allow any person other than Authorized Personnel (defined below) of Licensee or any Affiliate to access the POSaBIT POS Source Code; or (e) knowingly access or use, or enable any Merchant to access or use, any Licensed Technology for any purchase or activity that violates Applicable Law (defined below). Except as expressly agreed by the Parties in writing, neither Party shall have the right to use any of the other Party's trademarks in connection with this Agreement. Licensee may market, promote, advertise, distribute and otherwise make available the Licensee POS Software under the name of Licensee's choosing provided that Licensee maintains an appropriate separation between such name and POSaBIT's name and trademarks designed to avoid any consumer confusion regarding the source or origin of the Licensee POS Software, without obligation to identify POSaBIT and Licensee may remove any POSaBIT logos, tradenames, trademarks or other branding from the Licensed Technology.

**2.4 FOSS.** Licensee acknowledges that the POSaBIT POS Source Code references certain FOSS that POSaBIT uses as of the Effective Date in connection with POSaBIT's deployment of the

POSaBIT POS Source Code (“**Referenced FOSS**”). For the avoidance of doubt, the Referenced FOSS will not be transferred from POSaBIT to Licensee as part of POSaBIT’s delivery of the POSaBIT POS Source Code under this Agreement. Notwithstanding any terms in the Agreement, (a) nothing in this Agreement is intended, nor should be construed, to alter, enlarge, or restrict POSaBIT’s or Licensee’s rights or obligations under the applicable FOSS licenses with respect to the Referenced FOSS, and (b) the terms of the applicable FOSS licenses govern use and distribution of the Referenced FOSS in the POSaBIT POS Source Code. A complete and accurate list of the Referenced FOSS as of the Effective Date has been provided by POSaBIT to Licensee (the “**Initial FOSS List**”). Notwithstanding the foregoing, POSaBIT will not provide any FOSS (including in any Update or Resolution) that is subject to Excluded License Terms unless POSaBIT has specifically notified Licensee of such FOSS and the applicable Excluded License Terms (including through the Initial FOSS List) before making such FOSS available to Licensee in conjunction with the Licensed Technology and Licensee confirms in writing that is willing to receive the Licensed Technology that includes such FOSS (in the case of the Initial FOSS List such confirmation will be provided in connection with the acceptance process described in Section 2.1). Except for the inclusion of Referenced FOSS that constitutes an Acceptance Defect or the inclusion of FOSS subject to Excluded License Terms (excluding any FOSS listed on the Initial FOSS List) in violation of this Section 2.4, to the extent that Licensee requests assistance from POSaBIT to remove any other FOSS included in the POSaBIT POS Source Code, the scope and terms of such assistance would need to be mutually agreed to by the Parties (including, for example, whether such assistance would be provided as part of the Training and Onboarding Services).

**2.5 POSaBIT’s Rights.** POSaBIT and its licensors retain all right, title and interest in and to the POSaBIT POS Source Code, Related Documentation, Modifications created by or on behalf of POSaBIT (excluding any Licensed Licensee-Owned Modifications), Updates and Upgrades, all copies thereof (however made), and all Intellectual Property Rights therein. Licensee acknowledges and agrees that except for the licenses granted in Section 2.2, nothing in this Agreement will be deemed to grant, by implication, estoppel or otherwise, a license under any of POSaBIT’s existing or future Intellectual Property Rights. POSaBIT reserves all rights not granted to Licensee in Section 2.2. There are no implied licenses under this Agreement, and any rights not expressly granted to Licensee in this Agreement are reserved by POSaBIT, including the right to grant third parties non-exclusive licenses in the POSaBIT POS Source Code, Related Documentation, Updates and Upgrades.

**2.6 Modifications.** As between the Parties, Licensee retains all right, title and interest in all Modifications, including all Intellectual Property Rights in or to any Modifications, in each case that are created (a) by Licensee, (b) on behalf of Licensee by a third-party, or (c) on behalf of Licensee by POSaBIT specifically for and at the request of Licensee as part of the Training and Onboarding Services (subsection (c), the “**Licensed Licensee-Owned Modifications**” and subsections (a), (b) and (c), collectively, the “**Licensee-Owned Modifications**”). POSaBIT hereby irrevocably assigns and transfers to Licensee (without payment of any additional consideration) all of POSaBIT’s right, title and interest in and to the Licensed Licensee-Owned Modifications, including all Intellectual Property Rights, and waives all moral rights in the Licensed Licensee-Owned Modifications. Licensee shall have no obligation to disclose or provide any Licensee-Owned Modifications to POSaBIT. [*Redacted – Commercially Sensitive Information*]. Except as otherwise set forth in this Section, nothing in this Agreement will be deemed to grant, by implication, estoppel or otherwise, a license to POSaBIT under any of Licensee’s existing or future Intellectual Property Rights, except that Licensee, hereby grants to POSaBIT a limited, non-exclusive, nonsublicenseable, non-transferable (except as permitted in Section 14.7), right and license to use the Licensee POS Software solely to the extent necessary for POSaBIT to perform its obligations under this Agreement. [*Redacted – Commercially Sensitive Information*]

**2.7 Third Party Dependencies; Certifications.** The POSaBIT POS Source Code and other deliverables provided by POSaBIT, and the licenses granted by POSaBIT, under this Agreement exclude

any Third Party Dependencies. Notwithstanding anything to the contrary in this Agreement, POSaBIT shall have no liability or obligations for any failure of the POSaBIT POS Source Code to meet the Acceptance Criteria or the Specifications (including any Errors or Acceptance Defects) that are caused by: (a) Licensee not obtaining the right to use, or not using, the Third Party Dependencies in connection with the POSaBIT POS Source Code or Licensee POS Software; or (b) Licensee not obtaining any required seed-to-sale certifications (including without limitation METRC, Biotrack and LEAF). If requested by Licensee, POSaBIT will meet with Licensee to discuss how POSaBIT uses the Third Party Dependencies in making the POSaBIT POS Software available to POSaBIT's customers (including how the Third Party Dependencies interact and connect to the POSaBIT POS Source Code), and will otherwise use reasonable efforts to assist Licensee in obtaining the Third Party Dependencies for use in connection with the Licensee POS Software.

### **3. Updates; Upgrades; Support.**

**3.1 Security Vulnerabilities; Updates; Support.** In addition to POSaBIT's obligations under Section 3.2: (i) POSaBIT will promptly notify Licensee upon becoming aware of any security vulnerability or Error (provided that after the Minimum Royalty Period, POSaBIT's obligations with respect to Errors will be limited to Errors with a P1 or P2 priority classification (as defined in Schedule 3.2)) in the POSaBIT POS Source Code and will provide reasonable information to Licensee regarding how to remediate or mitigate such security vulnerability or Error; and (ii) to the extent that POSaBIT has developed an (a) enhancement, fix or release for the POSaBIT POS Source Code to address such security vulnerability or Error, or (b) an architectural technology release for any core functionality of the POSaBIT POS Source Code that is offered generally by POSaBIT to users of the POSaBIT POS Software (each, an "**Update**"), POSaBIT will (1) notify Licensee of such Update (with a brief description of its purpose), and (2) if Licensee elects to receive such Update, deliver to Licensee such Update in source code form promptly at no additional charge. Upon such election by Licensee to receive such Update, to the extent that Licensee is still utilizing the POSaBIT POS Source Code to which the Update applies, provide Licensee with reasonable assistance to enable Licensee to address and implement such Update in accordance with Section 1.2 of Schedule 3.2, and any such assistance will be provided by POSaBIT without charge; provided that after the expiration of the Minimum Royalty Period, POSaBIT's obligations to provide such assistance without charge shall apply only to security vulnerabilities and to Errors with a P1 or P2 priority classification. Any additional specifications, or changes to the Specifications, agreed to by the Parties in connection with the Update will be deemed to be Specifications for purposes of this Agreement.

**3.2 Support Services.** POSaBIT will also provide support services with respect to the Licensed Technology in accordance with Schedule 3.2 of this Agreement (such support services together with the support described in Section 3.1 and this Section 3.2, the "**Support Services**"); provided, however, except as otherwise agreed by the Parties in writing, the Support Services do not include the remediation of, and POSaBIT will not have any obligations (including any response or resolution obligations) with respect to, any defects, failures, problems, incidents, interruptions or other issues impacting or otherwise affecting the Licensee POS Software or any other Licensee products or services to the extent that they do not also constitute or result from security vulnerabilities in the POSaBIT POS Source Code or from Errors ("**Licensee POS Software Issues**"). POSaBIT will provide the Support Services free of additional charge except as otherwise provided in Schedule 3.2.

**3.3 Upgrades.** In the event that POSaBIT develops any updates, enhancements, or new versions of the POSaBIT POS Source Code (including product enhancements, incremental modules, product features and other technology releases) that do not constitute Updates and that POSaBIT makes available to other users of the POSaBIT POS Software ("**Upgrades**"), POSaBIT will provide Licensee with notice of such Upgrades, and if Licensee desires to receive any such Upgrades in connection with this Agreement, Licensee will notify POSaBIT and the Parties will discuss in good faith the terms and

conditions upon which POSaBIT would provide such Upgrades to Licensee. If Licensee elects to receive such Upgrades and the Parties negotiate mutually acceptable terms and conditions upon which POSaBIT would provide such Upgrades to Licensee, they will be licensed on such terms and conditions agreed to by the Parties; provided that POSaBIT shall have no obligation to provide any Upgrade to Licensee in connection with this Agreement until the Parties have agreed to, in writing, the terms and conditions that apply to provision of such Upgrade to Licensee in connection with this Agreement.

**3.4 Cooperation.** POSaBIT shall not be liable for any deficiency in performing the Support Services, Training and Onboarding Services or POSaBIT's other responsibilities under this Agreement to the extent such deficiency results from Licensee's failure to provide prompt and reasonable assistance, cooperation, and accurate information to POSaBIT that are necessary in order for POSaBIT to perform such responsibilities ("**Cooperation**"). Cooperation includes allocating and engaging additional Licensee resources as required to assist POSaBIT in performing the Support Services and Training and Onboarding Services, and providing all necessary review and approval of Licensed Technology as required hereunder (including during the Inspection Period).

4. [Title Redacted – Commercially Sensitive Information].

4.1 [Redacted – Commercially Sensitive Information]

4.2 [Redacted – Commercially Sensitive Information]

4.3 [Redacted – Commercially Sensitive Information]

**5. Training and Onboarding.**

**5.1 Training and Onboarding Services.**

(a) During the 6 month period commencing on the Effective Date ("**Training and Onboarding Period**"), in consideration for Licensee's timely payment of the Training and Onboarding Services Fee, POSaBIT will provide to Licensee the consulting, development, engineering, training and onboarding services described in Schedule 5.1 to this Agreement ("**Training and Onboarding Services**"), subject to the terms of this Section 5. Licensee's roadmap describing the Training and Onboarding Services that Licensee anticipates requiring during the Training and Onboarding Period, the anticipated hours that POSaBIT will be requested to devote to such tasks, the personnel that would be required to perform such tasks, and the schedules for when Licensee would like POSaBIT to provide such tasks ("**Roadmap**") is attached as Schedule 5.1(a) to this Agreement. During the Training and Onboarding Period, consistent with the Roadmap, POSaBIT will provide the applicable Training and Onboarding Services. During the Training and Onboarding Period, the Parties will cooperate in good faith to coordinate activities and resources and accommodate reasonable requests from each Party to make adjustments to the Roadmap.

(b) In the event that Licensee desires to have POSaBIT perform more than 2,000 hours of Training and Onboarding Services under this Agreement, POSaBIT will perform such additional Training and Onboarding Services in accordance with the framework described in Section 1.2 of Schedule 3.2.

**5.2 Key Personnel.** Schedule 5.2 identifies specific POSaBIT personnel who, among others, will perform the Training and Onboarding Services ("**Key Personnel**"). POSaBIT will use commercially reasonable efforts to have Key Personnel perform Training and Onboarding Services during the Training and Onboarding Period. Notwithstanding the foregoing, POSaBIT may remove Key Personnel without Licensee's consent for reasons of death, disability, failure to perform, family considerations, or resignation



or termination from employment for cause by POSaBIT, in which case POSaBIT will replace such removed person with a substitute at least equally as qualified as the removed person that has been approved in writing by Licensee (with approval may not be unreasonably withheld, conditioned or delayed).

**6. Payment; Royalty; Taxes.**

**6.1 Initial Fees.** On the Effective Date, Licensee will pay to POSaBIT: (a) a one-time signing fee in the amount of \$300,000 (“**Signing Fee**”); and (b) a one-time services signing fee in the amount of \$200,000 (“**Training and Onboarding Services Fee**”). Licensee will also reimburse POSaBIT for all pre-approved expenses (including travel expenses) incurred by POSaBIT in connection with performance of in-person Training and Onboarding Services. All fees or other amounts due under this Agreement are quoted and payable in United States dollars.

**6.2 Monthly Payment.**

(a) Commencing on the Acceptance Date, and continuing on the last day of each month prior to the fourth anniversary of the Acceptance Date (the “**Minimum Royalty Period**”), Licensee shall pay POSaBIT the amount set forth in Table 1 below as a payment for the licenses, rights, Support Services and other activities contemplated by this Agreement (“**Monthly Payment**”). Monthly Payments will be prorated for any payment periods that are less than a full calendar month. After POSaBIT receives full payment the Monthly Payment, the amount of the Monthly Payment shall be credited against, and reduce, the Royalty Payments that would otherwise be due and payable by Licensee under Section 6.3 for the calendar month to which the Monthly Payment is attributable; provided that in no event shall such reduction exceed the amount of the Monthly Payment attributable to such calendar month (such reduced Royalty Payment, the “**Reconciled Royalty Payment**”). No Monthly Payments will be due or payable attributable to any period after the fourth anniversary of the Acceptance Date.

For example:

If the Royalty Payment payable by Licensee for the 15<sup>th</sup> month during the Term following the Acceptance Date is \$500,000, and Licensee has made the Monthly Payment (i.e., \$387,500) attributable to such month, the payable Royalty Payment amount would be reduced by \$387,500, and the remaining \$112,500 would be due and payable by Licensee for such month.

If the Royalty Payment payable by Licensee for the 15<sup>th</sup> month during the Term following the Acceptance Date is \$300,000, and Licensee has made the Monthly Payment (i.e., \$387,500) attributable to such month, the payable Royalty Payment amount would be reduced by \$387,500, and \$0 would be due and payable by Licensee for such month.

For the avoidance of doubt, in the event that the Royalty Payments paid by Licensee under Section 6.3 for a calendar month do not exceed the Monthly Payment for such calendar month, no amounts shall be refunded to Licensee and no credits shall be continue following the end of such calendar month, except for any applicable Service Credit (as defined in Schedule 3.2) for such month.

**Table 1**

<b>Month during the Term Following Acceptance Date</b>	<b>Monthly Payment</b>
1 <sup>st</sup> month – 12 <sup>th</sup> month	\$325,000
13 <sup>th</sup> month – 24 <sup>th</sup> month	\$387,500
25 <sup>th</sup> month – 36 <sup>th</sup> month	\$450,000

37 <sup>th</sup> month – 48 <sup>th</sup> month	\$512,500
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(b) Notwithstanding the foregoing, on the Acceptance Date, Licensee will pay to POSaBIT a payment of \$3,900,000 (which amount shall represent the entirety of the Monthly Payments for months 1 – 12 of the Term following the Acceptance Date) (the “**Aggregate Year 1 Payment**”) and, upon making such payment, Licensee shall have no obligation to make any additional Monthly Payments until the 1st day of the 13th month of the Term following the Acceptance Date.

For purpose of calculating the monthly Royalty Payments for months 1 – 12 of the Term following the Acceptance Date (including the Reconciled Royalty Payment for each such month), upon making the Aggregate Year 1 Payment, the payment shall be attributed to each of months 1 – 12 of the Term following the Acceptance Date on a pro-rata basis and such pro rata amount (i.e., \$325,000) shall be used by the Parties to determine (1) the Reconciled Royalty Amount for each such month, and (2) the amount of any applicable Service Credit (as defined in Schedule 3.2) for such month.

For example:

If the Royalty Payment payable by Licensee for the 5<sup>th</sup> month during the Term following the Acceptance Date is \$300,000, and Licensee has made the Aggregate Year 1 Payment, the payable Royalty Payment amount would be reduced by \$325,000 (i.e., the pro rata portion of the Aggregate Year 1 Payment attributable to such month), and \$0 would be due and payable by Licensee for such month.

If the Royalty Payment payable by Licensee for the 5<sup>th</sup> month during the Term following the Acceptance Date is \$425,000, and Licensee has made the Aggregate Year 1 Payment, the payable Royalty Payment amount would be reduced by \$325,000 (i.e., the pro rata portion of the Aggregate Year 1 Payment attributable to such month), and the remaining \$100,000 would be due and payable by Licensee for such month.

### **6.3 Monthly Royalties.**

(a) Licensee will pay to POSaBIT ongoing royalty fees on a monthly basis [*Redacted – Commercially Sensitive Information*] (the “**Royalty Payments**”). For the avoidance of doubt, (i) each Royalty Payment is calculated based on the aggregate number of POS Devices in existence at any time during a calendar month, and not the number of new POS Devices deployed for such calendar month, and (ii) Licensee will be responsible for Royalty Payments attributable to all POS Devices directly deployed by Licensee or via Affiliates and other Licensee resellers, distributors and other sublicensees. All Royalty Payments for a calendar month will become due and payable by Licensee to POSaBIT as of the 1<sup>st</sup> day of the following calendar month, and Licensee shall pay such Royalty Payments to POSaBIT within thirty (30) days thereof. Any undisputed amounts not paid when due by Licensee shall accrue a late fee at the rate of one and a half percent (1.5%) per month or the maximum rate allowed by law, whichever is lower.

(b) On or prior to the 15th day of each calendar month, Licensee shall provide to POSaBIT a report accounting for and describing with reasonably specificity (the “**Monthly Report**”): (i) all existing and new subscriptions, licenses, and any other forms of distribution or making available of the Licensee POS Software during the prior calendar month (including all subscriptions, licenses, and any other form of distribution or making available of the Licensee POS Software in combination with another Licensee or third party product or service); (ii) the aggregate number of POS Devices deployed for the prior calendar month; (iii) the number of new POS Devices deployed during the prior calendar month; and (iv) the amounts payable by Licensee to POSaBIT for the prior calendar month, with a detailed breakdown by

U.S. state (or, for Merchants located outside the U.S., by country) and a calculation of the Reconciled Royalty Payment.

**6.4 Buy-Out Right.** Any time after the 3<sup>rd</sup> anniversary of the Acceptance Date, Licensee shall have the right to extinguish its obligation to pay any future Royalty Payments or Monthly Payments to POSaBIT by: (a) issuing a written notice notifying POSaBIT that Licensee is exercising its right under this Section 6.4 to buy-out its Royalty Payment and Monthly Payment obligations through a lump-sum payment to POSaBIT in an amount equal to the greater of (x) \$30,750,000, and (y) 5 times the Royalty Payment payable by Licensee to POSaBIT for the prior twelve (12) calendar month period (the “**Buy-Out Payment**”); and (b) paying to POSaBIT the Buy-Out Payment in full (“**Buy-Out Right**”). Upon exercising the Buy-Out Right (including for the avoidance of doubt by making the Buy-Out Payment): (i) Licensee shall have no future obligations under Sections 6.2 or 6.3 (provided, for the avoidance of doubt, any amounts that are then due and payable by Licensee shall remain due and payable notwithstanding the exercise of the Buy-Out Right) and POSaBIT shall have no right to terminate this Agreement pursuant to Section 11.4, (ii) POSaBIT’s obligations under Sections 3 shall cease as of the date that is 6 months after receipt of the Buy-Out Payment, and (iii) POSaBIT’s obligations under Section 7 shall cease as of the 4<sup>th</sup> anniversary of the Effective Date.

**6.5 Taxes.** Licensee will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on Licensee upon or with respect to the transactions and payments under this Agreement. All fees payable by Licensee are exclusive of applicable taxes and duties, including VAT, GST, excise taxes, sales and transactions taxes, and gross tax receipts (“**Indirect Taxes**”). POSaBIT may charge, and Licensee will pay, all Indirect Taxes that POSaBIT is legally obligated or allowed to collect from Licensee. Licensee will provide all information to POSaBIT as reasonably required to determine whether POSaBIT is obligated to collect Indirect Taxes from Licensee under any applicable law. POSaBIT will not collect, and Licensee will not pay, any Indirect Tax for which Licensee furnishes POSaBIT a properly completed exemption certificate or a direct payment permit certificate for which Licensee may claim an available exemption from such Indirect Tax. All payments made by Licensee to POSaBIT under this Agreement will be made free and clear of any withholding or deduction for taxes. If any taxes (for example, international withholding taxes) are required to be withheld on any payment, Licensee will pay additional amounts as necessary so that the net amount received by POSaBIT is equal to the amount then due and payable under this Agreement.

**7. Right of First Refusal.** If POSaBIT intends to accept an offer from a third party for an exclusive license or the transfer of ownership (other than in connection with a Corporate Sale) of the POSaBIT POS Source Code to such third party (“**Source Code Sale Transaction**”), Licensee will have a right of first refusal with respect to such exclusive license or ownership interest in the POSaBIT POS Source Code as described in this Section 7. In such event, POSaBIT will provide Licensee with a written transfer notice (a “**Transfer Notice**”) reasonably describing the proposed transfer or exclusive license and the date on which the proposed transfer or exclusive license would take place. Upon Licensee’s receipt of such Transfer Notice, Licensee will have the right to elect to acquire an exclusive license or ownership of the POSaBIT POS Source Code on the terms of the proposal described in the Transfer Notice by delivery of a notice of exercise of the right of first refusal (a “**Exercise Notice**”) within seven (7) days after the date when the Transfer Notice was sent by POSaBIT. Upon POSaBIT’s receipt of such Exercise Notice from Licensee, POSaBIT and Licensee will use good faith efforts to implement a mutually acceptable agreement documenting the terms set forth in the proposal described in the Transfer Notice (a “**Final Agreement**”). If Licensee does not exercise its right of first refusal, whether by failing to deliver an Exercise Notice pursuant to this Section 7, by failing to agree to all terms of the Source Code Sale Transaction or otherwise, or the Parties are unable to enter into a Final Agreement after good faith negotiation within thirty (30) days after POSaBIT’s receipt of the Exercise Notice from Licensee, POSaBIT may proceed with the Source

Code Sale Transaction. “**Corporate Sale**” means a change of control (via a merger or transfer of equity), consolidation, or corporate reorganization of POSaBIT, or sale of all or substantially all of POSaBIT’s assets.

## **8. Confidentiality.**

**8.1 Confidentiality of Information.** “**Confidential Information**” of a Party means information, ideas, materials or other subject matter of such Party, whether disclosed orally, in writing or otherwise in connection with the activities contemplated by this Agreement, that is marked or identified as confidential or proprietary or that is provided under circumstances reasonably indicating that it is confidential or proprietary. Confidential Information includes, without limitation, the terms and conditions of this Agreement; all business plans, technical information or data, product ideas, processes, procedures, methods, techniques, calculation algorithms and analytical routines; and all personnel, customer, contracts and financial information or materials disclosed or otherwise provided by a Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) in connection with the activities contemplated by this Agreement. Without limiting the generality of the foregoing, Confidential Information of POSaBIT includes the Licensed Technology and Confidential Information of Licensee includes the Licensee POS Software (excluding the Licensed Technology) and the Licensee-Owned Modifications. Confidential Information does not include information that: (i) is or becomes publicly known through no wrongful act or omission of the Receiving Party; (ii) can be shown by documentation to have been rightfully known by the Receiving Party before receipt from the Disclosing Party (excluding the Licensed Technology); (iii) becomes rightfully known to the Receiving Party without confidential or proprietary restriction from a source other than the Disclosing Party that does not owe a duty of confidentiality to the Disclosing Party with respect to such Confidential Information; or (iv) is independently developed by the Receiving Party without the use of or reference to the Confidential Information of the Disclosing Party, as shown by documentation by the Receiving Party.

**8.2 Restrictions on Use.** The Receiving Party will not use Confidential Information of the Disclosing Party for any purpose other than in furtherance of this Agreement and the activities or to exercise the rights described herein. The Receiving Party will not disclose Confidential Information of the Disclosing Party to any third parties except as otherwise permitted hereunder. The Receiving Party may disclose Confidential Information of the Disclosing Party to its employees, contractors, subcontractors and Affiliates who need to know such information in connection with the transactions contemplated by this Agreement, provided they are informed of the confidential nature of the Confidential Information and are bound by enforceable restrictions regarding disclosure and use of such information comparable to and no less restrictive than those in this Agreement and agree to only use such information on behalf of the Receiving Party and of no other person. The Receiving Party will be responsible for any failure of its employee, contractor, subcontractor, or Affiliate to adhere to such restrictions and, in the event of such failure, will use commercially reasonable efforts to have such employee, contractor, subcontractor, or Affiliate cease and remedy such failure. Notwithstanding the foregoing in this Section 8.2, Licensee and its Affiliates may disclose, license and use the Licensed Technology as permitted under Sections 2.2, 2.3 and 11.5 of this Agreement [*Redacted – Commercially Sensitive Information*]. The Receiving Party will protect Confidential Information of the Disclosing Party with at least the same degree of care it uses to protect its own confidential information of a similar nature or sensitivity, but no less than reasonable care under the circumstances.

**8.3 Exclusions.** Notwithstanding the foregoing, this Agreement will not prevent the Receiving Party from disclosing Confidential Information of the Disclosing Party to the extent required by a judicial order or other legal obligation, provided that, in such event, the Receiving Party will (except to the extent prohibited by applicable laws) promptly notify the Disclosing Party to allow intervention (and will cooperate with the Disclosing Party, at the expense of the Disclosing Party) to contest or minimize the

scope of the disclosure (including application for a protective order). Further, each Party may disclose the terms and conditions of this Agreement: (a) as required by applicable securities laws, including requirements to file a copy of this Agreement (redacted to the extent reasonably permitted by applicable laws) or to disclose information regarding the provisions hereof or performance hereunder to applicable regulatory authorities (as further described in the following sentence); (b) in confidence, to legal counsel; (c) in confidence, to accountants, banks, and financing sources and their advisors; and (d) in connection with the enforcement or the exercise of this Agreement or any rights hereunder. The Parties acknowledge that POSaBIT may be required, in accordance with Canadian securities laws, to file a copy of this Agreement on its profile at [www.sedar.com](http://www.sedar.com), and in such case POSaBIT agrees that it shall make such redactions to this Agreement as are permitted under Section 12.2(3) of National Instrument 51-102 – *Continuous Disclosure Obligations* (“**NI 51-102**”) (subject to compliance by POSaBIT with the remaining provisions of Section 12.2 of NI 51-102) and with the prior consultation of Licensee, provided that in the case of any disagreement between POSaBIT and Licensee with respect to any redactions, the position of POSaBIT shall prevail provided that POSaBIT acts reasonably and in good faith.

**8.4 Notice of Unauthorized Use or Disclosure.** The Receiving Party will notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of the Disclosing Party’s Confidential Information by the Receiving Party (including by its employees, agents, contractors or Affiliates). The Receiving Party will cooperate with the Disclosing Party to regain possession of such Confidential Information and prevent its further unauthorized use and disclosure.

**8.5 Additional Procedures for Handling Source Code.** Licensee may not permit access to or allow any third party to work with the POSaBIT POS Source Code in any forms, except Licensee’s and its Affiliates’ employees or contractors who require such access to perform services for Licensee or Affiliates with respect to the Licensed Technology, and who have agreed in writing to maintain the POSaBIT POS Source Code in confidence in accordance with terms no less restrictive than those imposed under this Section 8 (“**Authorized Personnel**”). Such Authorized Personnel must comply with the applicable terms of this Agreement and Licensee shall remain liable at all times for any acts and/or omissions of any of its Authorized Personnel, with respect to its performance hereunder.

**9. Audit Rights.** Licensee shall (a) develop, implement, and maintain internal controls designed to ensure compliance with this Agreement, and (b) keep and maintain complete and accurate books, records and accounts relating to this Agreement. During the Term and for three (3) years thereafter, POSaBIT shall have the right, no more than once annually and upon at least 10 business days’ prior written notice, to audit such books, records and accounts of Licensee and its Affiliates related to this Agreement to verify Licensee’s and its Affiliates’ compliance with the terms and conditions of this Agreement. Any such audit shall be at POSaBIT’s expense; provided that if such audit reveals an underpayment of three percent (3%) or more, or any other material breach of or violation of this Agreement by Licensee or its Affiliates, Licensee shall promptly pay to POSaBIT all costs and expenses of such audit. Licensee shall promptly pay POSaBIT the amount of any underpayment (and correct any other material breach in accordance with the cure period set forth in Section 11.2) revealed by any such audit. Licensee and its Affiliates will provide reasonable assistance to POSaBIT in connection with this provision. In addition to the foregoing, in the event that any government authority or regulator having authority, oversight jurisdiction or similar power over POSaBIT in any national, federal, state or local jurisdiction (a “**POSaBIT Regulator**”) requires access or visibility into Licensee’s or its Affiliates activities or obligations in connection with this Agreement, Licensee and its Affiliates will use reasonable efforts to cooperate with such POSaBIT Regulator and provide such POSaBIT Regulator with such access and visibility.

## **10. Warranties; Disclaimer.**

**10.1 Mutual Warranties.** Each Party represents and warrants to the other Party that:

(a) it is a duly and validly organized and existing corporation in good standing under the laws of the jurisdiction of its organization and that it is legally qualified to do business in each jurisdiction in which this Agreement may be performed and where its activities hereunder requires such qualification;

(b) the performance of this Agreement and the consummation of the transactions contemplated herein will not result in any breach or violation of any terms or provisions of, or constitute a default under, its Certificate of Incorporation or By-Laws or other organizational documents or any material agreement or instrument to which it is a party, by which it is bound or to which any of its property is subject;

(c) all requisite corporate action has been taken for the due authorization, execution, delivery and performance of this Agreement by it, and this Agreement constitutes a legal binding obligation, enforceable against such party, in accordance with its terms; and

(d) it will comply with all laws or regulations, ordinances and requirements of any governmental entity applicable to such Party in performing its obligations and exercising its rights under this Agreement (“**Applicable Laws**”).

**10.2 Licensed Technology; Services Warranties.** POSaBIT represents and warrants to Licensee that:

(a) it has sufficient rights in the Licensed Technology to grant to Licensee the rights and licenses granted under this Agreement, and is not aware of any asserted or threatened third party claims challenging or affecting any such right granted hereunder;

(b) as of the date of delivery described in Section 2.1, that: (i) subject to Section 2.7, the Licensed Technology will substantially conform to the Acceptance Criteria applicable to the Licensed Technology; (ii) the POSaBIT POS Source Code does not contain any virus, worm, Trojan horse, backdoor, or any disabling, shut-down, time lock, or timeout device or any other disruptive, damaging or corrupting code or feature that would, if triggered adversely affect the performance of the POSaBIT POS Source Code;

(c) POSaBIT has and will disclose to Licensee all third party software (including FOSS), included in the Licensed Technology and, as of the date of delivery described in Section 2.1, the Licensed Technology does not include any FOSS that is subject to Excluded License Terms;

(d) the Training and Onboarding Services and Support Services will be performed by appropriately trained and qualified personnel and in a professional manner and in compliance the terms and conditions of this Agreement; and

(e) if any third party software included in the Licensed Technology is subject to a separate shrinkwrap or clickwrap license, Licensee’s operation of the third party software (including without limitation, opening the shrinkwrapped package or clicking “accept” or “OK” or the like) shall not limit any of Licensee’s rights or POSaBIT’s obligations hereunder, except as specifically set forth in a writing signed by Licensee.

**10.4 Disclaimer.** EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, EACH PARTY MAKES NO WARRANTIES AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES THAT THE LICENSED TECHNOLOGY, THE LICENSEE POS SOFTWARE OR THE LICENSED LICENSEE-

OWNED MODIFICATIONS ARE FREE OF DEFECTS, VIRUS-FREE, ABLE TO OPERATE ON AN UNINTERRUPTED BASIS, MERCHANTABLE, FIT FOR A PARTICULAR PURPOSE, ACCURATE, OR NON-INFRINGEMENT. EACH PARTY ACKNOWLEDGES THAT THE DISCLAIMER OF WARRANTY UNDER THIS SECTION 10 CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

## **11. Term and Termination.**

**11.1 Term.** The term of this Agreement will commence on the Effective Date and will continue unless and until terminated as provided under Section 2.1, Section 12.2, or this Section 11 (“**Term**”).

**11.2 Termination for Breach.** Either Party may terminate this Agreement upon written notice to the other Party if the other Party is in material breach of this Agreement, and, for breaches capable of cure, the breaching Party does not cure the breach within thirty (30) days after receiving written notice of the breach from the non-breaching Party. Licensee may also terminate this Agreement immediately upon written notice to POSaBIT in accordance with the termination rights described in Schedule 3.2.

**11.3 Termination for Convenience.** Licensee may terminate this Agreement at any time with 180 days’ prior written notice to POSaBIT, provided that in no event may Licensee issue such termination notice until after the 4<sup>th</sup> anniversary of the Effective Date.

**11.4 Termination by POSaBIT.** POSaBIT may terminate this Agreement immediately upon written notice to Licensee if, at the end of any calendar year after the 4<sup>th</sup> anniversary of the Effective Date, the number of new POS Devices deployed by Licensee or its sublicensees during such calendar year is below 50% of the total number of new POS devices deployed by Licensee or its sublicensees during such calendar year. POSaBIT may also terminate this Agreement immediately upon written notice to Licensee in accordance with the termination rights described in Section 12.2.

### **11.5 Effect of Termination.**

(a) Upon any termination of this Agreement, all Monthly Payments that are due and payable to POSaBIT as of the effective date of termination and that have not yet been paid by Licensee shall become immediately due and payable without further action by POSaBIT.

(b) The termination of this Agreement for any other reason shall not affect any subscriptions or licenses to the Licensee POS Software already sold by Licensee to any then-existing Licensee customer whose subscription or license has not yet expired or terminated as of the date of the termination of this Agreement (“**Surviving Customer**”), and Licensee may continue to exercise the rights and licenses granted under Section 2.2 to support Surviving Customers’ use of the Licensee POS Software for a period not to exceed 2 years after termination of this Agreement, subject to all of the terms and conditions of this Agreement, including without limitation the payment terms in Section 6 with respect to Surviving Customers. Licensee may not renew any subscription or license of a Surviving Customer to the Licensee POS Software, or permit a Surviving Customer to renew such subscription or license, after the termination of this Agreement. For avoidance of doubt, during the wind-down period described in this Section 11.5(b), Licensee may not distribute or otherwise make available the Licensee POS Software to anyone other than Surviving Customers, and may not sell or make available new subscriptions or licenses to the Licensee POS Software to anyone, including to any Surviving Customers. During the wind-down period described in this Section 11.5(b), POSaBIT will also continue to perform its obligations to support and maintain the Licensed Technology hereunder (if any), subject to Licensee’s obligation to comply with the applicable payment terms in Section 6 with respect to Surviving Customers and otherwise perform its obligations under this Agreement.

(c) Except as otherwise provided in this Section 11.5 or in Section 2.6, upon the termination of this Agreement for any reason, all licenses granted under this Agreement will immediately terminate. Except as otherwise provided in Section 11.5(b), Licensee must discontinue all use of the Licensed Technology and permanently erase all intangible copies of the Licensed Technology and other POSaBIT Confidential Information, and return to POSaBIT all tangible copies of the Licensed Technology and other Confidential Information of POSaBIT in Licensee's possession (including printouts, flow charts, and notes containing or describing the Licensed Technology or POSaBIT Confidential Information), and provide POSaBIT with written certification that all such copies have been returned or destroyed. Licensee will also immediately pay POSaBIT all amounts due but unpaid under this Agreement. POSaBIT will destroy or return to Licensee all Licensee Confidential Information [Redacted – Commercially Sensitive Information] in POSaBIT's possession (including printouts, flow charts, and notes containing or describing the Licensee Confidential Information [Redacted – Commercially Sensitive Information]), and provide Licensee with written certification that all such copies have been returned or destroyed. Sections 1, 2.3, 2.5, 2.6, 6 (with respect to any fees or royalties accrued or amounts otherwise payable prior to termination), 8, 9, 10.4, 11.5, 12, 13, and 14 will survive the termination of this Agreement for any reason.

## 12. Indemnity.

**12.1 Indemnification by Licensee.** Upon POSaBIT's request, Licensee will defend POSaBIT and its affiliates and their officers, directors, agents, representatives, contractors and employees ("POSaBIT Indemnified Parties") against any suit, claim, demand, investigation, proceeding, cause of action, or action ("Claim") brought against any POSaBIT Indemnified Party by any third party to the extent arising out of: (a) an allegation that Licensee's development, distribution, or making available of or access to or use of the Licensee POS Software infringes or misappropriates any intellectual property rights of any third party (except for those Claims subject to indemnification by POSaBIT pursuant to Section 12.2.); (b) any breach of Section 2.2, 2.3 or 8 by Licensee, (c) any gross negligence or willful misconduct by or on behalf of Licensee in connection with this Agreement, or (d) any acts or omissions of Licensee's Affiliates, distributors, resellers, or other direct or indirect sublicensees that breach this Agreement. Licensee will also indemnify the POSaBIT Indemnified Parties against all losses, costs, expenses (including attorney's fees), damages, and liabilities ("Losses") resulting from any Claim described in this Section 12.1.

**12.2 Indemnification by POSaBIT.** Upon Licensee's request, POSaBIT will defend Licensee and its officers, directors, agents, representatives, contractors and employees ("Licensee Indemnified Parties") against any Claim brought against any Licensee Indemnified Party by any third party to the extent arising out of: (a) an allegation that the Licensed Technology or the use, distribution or making available of the Licensed Technology by Licensee in accordance with this Agreement infringes or misappropriates any intellectual property rights of any third party; (b) any gross negligence or willful misconduct by or on behalf of POSaBIT in connection with this Agreement, or (c) any breach of Section 2.6 or 8 by POSaBIT. POSaBIT will also indemnify the Licensee Indemnified Parties against all Losses resulting from any Claim described in this Section 12.2. If the Licensed Technology or any portion thereof becomes or in POSaBIT's reasonable opinion is likely to become the subject of a Claim described in clause (a) of this Section 12.2, POSaBIT (at its sole discretion and expense) may either: (i) procure for Licensee the right to continue to distribute or use the applicable technology; or (ii) modify the applicable technology so as to make it non-infringing without substantially reducing its utility; provided, however, that if POSaBIT deems, in its good faith business judgment, that the foregoing remedies are not commercially reasonable, POSaBIT may terminate this Agreement upon written notice to Licensee and POSaBIT will refund to Licensee all amounts paid for the Licensed Technology depreciated on a straight line basis over a period of five (5) years commencing on the Acceptance Date. In any event, the foregoing obligations of POSaBIT do not apply: (A) if the Licensed Technology is combined with any other products, processes, or materials not provided by POSaBIT, where the claim would not have occurred in absence of such combination; (B) to the extent that the Licensed Technology is modified by anyone other than POSaBIT, where the claim would not have



occurred in absence of such modification; or (C) if the Licensed Technology is not used in accordance with this Agreement, where the claim would not have occurred in absence of such unauthorized use.

**12.3 Indemnification Procedures.** Each Party will notify the other Party of any Claim for which such Party seeks indemnification or defense under this Agreement (provided that any delay in providing such notice will not relieve the indemnifying Party of its indemnification or defense obligations to the extent the indemnifying Party is not materially prejudiced thereby) and give the indemnifying Party authority, reasonable information and assistance (at the indemnifying Party's expense) for the defense of such Claim. The indemnifying Party will not without the indemnified Party's prior written consent enter into any settlement agreement in connection with a Claim that: (a) admits guilt, fraud, liability, or wrongdoing of the indemnified Party; (b) requires the indemnified Party to commit to action or to refrain from action; or (c) provides for any damages other than money damages for which the indemnified Party is indemnified. The indemnified Party reserves the right to participate in the defense of any indemnified claim at such indemnified Party's cost.

**13. Limitations on Liability.** TO THE EXTENT ALLOWED BY APPLICABLE LAW AND EXCLUDING ANY LIABILITY OR DAMAGES ARISING OUT OF THE EXCLUDED ITEMS (DEFINED BELOW): (A) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST DATA, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT, OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) EACH PARTY'S ENTIRE LIABILITY ARISING UNDER THIS AGREEMENT SHALL NOT EXCEED THE GREATER OF (1) \$3,900,000, AND (2) THE FEES PAID OR PAYABLE BY LICENSEE TO POSABIT UNDER THIS AGREEMENT DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE APPLICABLE CLAIM (OR FOR A CLAIM ARISING BEFORE THE FIRST ANNIVERSARY OF THE EFFECTIVE DATE, THE AMOUNT PAID OR PAYABLE FOR THE FIRST 12 MONTH PERIOD OF THIS AGREEMENT). For purposes of this Agreement, "**Excluded Items**" means a Party's breach of Section 8 and a Party's obligations under Section 12.

#### **14. General.**

**14.1 Relationship of Parties.** Notwithstanding any other provision in this Agreement, Licensee is not POSaBIT's agent. Rather, POSaBIT and Licensee are independent contractors, and there is no relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have any authority to act, or attempt to act, or represent itself, directly or by implication, as an agent of the other or in any manner assume or create, or attempt to assume or create, any obligation on behalf of or in the name of the other, nor will either Party be deemed the agent or employee of the other.

**14.2 Publicity.** Neither Party may make any public statement or other announcement (including, without limitation, issuing a press release or pre-briefing any member of the press or other third party) relating to the terms or existence of this Agreement without the prior written approval of the other Party, except as permitted by Section 8.3, as required by applicable law, or to a potential or actual investor or acquirer, or to its financial advisors, accountants or legal representatives, subject to binding the recipients of that information to confidentiality obligations not less protective of such information than as provided in this Agreement.

**14.3 Notices.** Any notice or other communication under this Agreement given by either Party to the other will be in writing and delivered either (a) in person or by first-class, registered, or certified U.S. mail or overnight delivery service, return receipt requested, postage prepaid, or (b) by e-mail with a hard

copy mailed or delivered as provided in (a) above unless first acknowledged received by the recipient in writing whether by e-mail or other means. Notices will be deemed received three (3) Business Days after the same has been sent in accordance with this section. Notices to Licensee will be directed to the Licensee contact person at the address specified on the signature page. Notices to POSaBIT must be sent as follows:

**POSaBIT US, Inc.**  
11915 124<sup>th</sup> Ave NE  
Kirkland, WA 98034  
Attn: Matt Fowler  
Email: [*Redacted – Personal Information*]

Either Party may from time to time change such address or number by giving the other Party notice of such change in accordance with this section.

**14.4 Nonwaiver.** The failure of either Party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions, rights, or remedies in that or any other instance; rather, the same will be and remain in full force and effect. Further, no waiver will be valid unless set forth in a written instrument signed by the Party to be bound thereby.

**14.5 Governing Law; Venue.** This Agreement will be governed, interpreted, construed and enforced in all respects in accordance with the laws of the State of New York, without regard to any choice of law principles to the contrary. The Parties expressly exclude the application of the 1980 United Nations Convention on the International Sale of Goods (if applicable). Any legal action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby must be instituted exclusively in a court of competent jurisdiction, federal or state, located within the State of New York and in no other jurisdiction. Each Party further irrevocably waives any claim that a more convenient forum can be found and consents to the exclusive personal jurisdiction and venue in, and agrees to exclusive service of process issued or authorized by, any such court.

**14.6 Remedies.** Each Party acknowledges that the other Party's Confidential Information constitutes valuable trade secrets of such Party and its suppliers, and that any unauthorized use or disclosure of such materials would cause such Party irreparable harm for which its remedies at law would be inadequate. Therefore, in addition to any other right or remedy available at law or in equity, and notwithstanding the foregoing, a Party may apply to any court of competent jurisdiction for specific performance or injunctive relief to enforce or prevent any breach of Sections 2 and 8 of the other Party without posting a bond or other security. The prevailing Party in any action (by final and non-appealable order or judgment in its favor) will be entitled to recover from the non-prevailing Party its reasonable legal fees and expenses incurred in connection with the action.

**14.7 Assignment.** This Agreement may not be assigned, in whole or part, by either Party without the prior written consent of the other Party; provided, that, either Party may assign or transfer this Agreement (including all of such Party's rights and obligations under this Agreement) without the consent of the other Party in connection with a change of control, merger, consolidation or corporate reorganization of such Party, or sale of all or substantially all of such Party's assets. Subject to the preceding sentence, the rights and liabilities of the Parties hereto will bind and inure to the benefit of their respective assignees and successors and is binding on the Parties and their successors and assigns. Any attempted assignment other than in accordance with this Section 14.7 will be null and void.

**14.8 Compliance.** Regardless of any disclosure made to POSaBIT of an ultimate destination of the POSaBIT POS Source Code and other POSaBIT Confidential Information, Licensee acknowledges that all such materials are being released or transferred to Licensee in or from the United States and are subject to U.S. export control laws and regulations. Licensee acknowledges its exclusive obligation to ensure that any further export of such materials by Licensee is in compliance with U.S. export control laws and all applicable governmental regulations of any foreign countries.

**14.9 United States Government Purchases.** Notwithstanding anything in this Agreement to the contrary (including Section 2.2), except as otherwise consented to by POSaBIT on a case by case basis, the scope of the license rights described in Section 2.2 does not include any Merchant that is a U.S. federal or state government agency, and Licensee is not permitted to license, distribute or otherwise make available the Licensed Technology to any U.S. federal or state government agency. Notwithstanding the foregoing, POSaBIT POS Source Code and the Related Documentation are “commercial computer software” and “commercial computer software documentation” respectively, as specified in FAR 12.212, 27.4, 52.227-14, 52.227-19 and any other FARs applicable to governmental agency end users and their successors.

**14.10 Rights upon Bankruptcy.** All rights and licenses granted under or pursuant to this Agreement by a Party to the other Party are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, or replacement provision therefor (the “Code”), licenses to rights to “intellectual property” as defined in the Code (or under similar provisions of bankruptcy laws of other jurisdictions). The Parties agree that each Party, as licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the Code (or under similar provisions of bankruptcy laws of other jurisdictions). The Parties further agree that, in the event of the commencement of bankruptcy proceedings by or against a licensor Party under the Code (or under similar provisions of bankruptcy laws of other jurisdictions), the licensee Party shall be entitled to retain all of its rights under the Agreement.

**14.12 Non-Solicitation.** During the period commencing on the Effective Date and ending on the 12-month anniversary of the termination of this Agreement, neither Licensee nor any of its Affiliates shall, directly or indirectly, solicit any employee or agent of POSaBIT or any of its Affiliates to work for, or provide services to, Licensee, any Licensee Affiliate or any other individual, entity or organization other than POSaBIT; provided that the foregoing will not apply to the hiring of employees or agents who respond to general employment advertisements and solicitations that are not specifically directed at the employees or agents of POSaBIT.

**14.13 Treatment of POSaBIT POS Source Code as a Trade Secret.** During the Term, POSaBIT will treat the POSaBIT POS Source Code as a trade secret and will take reasonable measures to maintain its secrecy and otherwise maintain the POSaBIT POS Source Code as a trade secret under Applicable Law. Without limiting the generality of the foregoing, POSaBIT agrees that it will not publicly disclose or license a material portion of the POSaBIT POS Source Code as FOSS or under a FOSS license.

**14.14 Waiver; Amendments.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or such provision on any other occasion. This Agreement may only be amended by a written document signed by both Parties.

**14.15 Severability.** If any provision is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect, and the Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

**14.16 Counterparts.** This Agreement may be signed in several counterparts, each of which will constitute an original, and all of which will constitute one and the same instrument.

**14.17 Entire Agreement.** This Agreement, including all Schedules attached hereto, constitutes the entire, final and exclusive agreement between the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, and communications, whether written or oral including the Term Sheet finalized by the Parties on or about May 27, 2022 with respect to the subject matter hereof (provided that nothing herein shall amend, modify or supersede the [Redacted – Commercially Sensitive Information] or the Confidentiality Agreement, dated October 28, 2021, between the Parties with respect to confidential information disclosed by the Parties prior to the Effective Date). No inconsistent, additional, or preprinted terms on any purchase order or other business form of either Party will apply.

The Parties have caused this Agreement to be executed as of the Effective Date by their respective undersigned authorized representatives.

**Licensee:**

[Redacted – Confidential Information]

Signature: [Redacted – Confidential Information]

Printed Name: [Redacted – Confidential Information]

Title: [Redacted – Confidential Information]

**POSaBIT:**

POSaBIT, Inc.

Signature: (signed) "Ryan Hamlin"

Printed Name: Ryan Hamlin

Title: Chief Executive Officer

**Schedule 1.19**

**POSaBIT POS Software**

*[Redacted – Confidential Information]*

**Schedule 1.23**

**Supplemental Documentation**

*[Redacted – Commercially Sensitive Information]*

**Schedule 1.24**

**Third Party Dependencies**

*[Redacted – Commercially Sensitive Information]*

**Schedule 3.2**

**Support Services**

*[Redacted – Commercially Sensitive Information]*



**Schedule 5.1**

**Training and Onboarding Services**

*[Redacted – Commercially Sensitive Information]*

**Schedule 5.1(a)**

**Roadmap**

*[Redacted – Commercially Sensitive Information]*

**Schedule 5.2**

**Key Personnel**

*[Redacted – Commercially Sensitive Information]*