

InfoTouch License Agreement

You have entered into a Merchant Processing Agreement with Merchant Services, Inc. doing business as EVO Merchant Services (“EVO Merchant Services”) for the use of credit card processing services through EVO Merchant Services. The credit card processing services involve the use of software developed by third parties for which EVO POS Technologies, LLC (“EPT”) has been duly licensed and is authorized to distribute. By your execution of the Merchant Processing Agreement with EVO Merchant Services and the use of this credit card processing system, you, the retail merchant, have also agreed, as a sublicensee, to comply with the terms and conditions set forth herein as a condition to your continued use of the software.

BY INSTALLING AND USING THIS SYSTEM SOFTWARE YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT INSTALL OR USE THIS PRODUCT.

THIS AGREEMENT PROVIDES LIMITED WARRANTY PROTECTION AND LIMITS THE AMOUNT OF DAMAGES YOU MAY RECOVER IN THE EVENT OF A FAILURE OF THE CREDIT CARD PROCESSING SYSTEM. THIS SYSTEM WILL NOT WORK FOR ANY TRANSACTIONS NOT PROCESSED THROUGH EVO MERCHANT SERVICES.

- 1. THE SOFTWARE.** This agreement (the “Agreement”) is made between EPT and each end user (“Sublicensee”) of this system. This Agreement applies to the software computer program contained within the system and any updates or maintenance releases thereto and the supporting documentation and materials (collectively, the “Software”). This Agreement shall be effective on the first to occur of (a) the delivery to Sublicensee of the Media containing the Software, or (b) the date the Software is first accessed by the merchant’s Electronic Device after receipt of possession of the Software by such merchant (the “Effective Date”). As used in this Agreement, “Media” means any CD ROM, magnetic disk or any other object or device which can record information in a form that can be transferred into an Electronic Device via any means. Electronic Device means any electronic device which can accept a software load and execute the software.

In consideration of payment of the license fee for the Software, we hereby grant to you and you hereby accept from us a non-exclusive and non-transferable twelve (12) month license to use the Software, in compiled, object code form only, in accordance with the terms and conditions of this Agreement. The Software may be used only by you for your internal business purposes. Some of the Software may be owned by third parties and sublicensed to you. You acknowledge that the Software is protected by United States copyright law and international treaty provisions, and that the Software programs contain trade secrets of ours and our third party licensors. All right, title and interest in and to the Software is, and remains in, us and our licensors, except for the right to use it

in accordance with this Agreement. You agree not to reverse engineer, disassemble, or reverse compile any Software object code, or otherwise derive any source code therefor. Except as expressly permitted in this Agreement or the applicable documentation, you agree not to modify, customize, adapt, translate, enhance or change any of the Software, or create any derivative works based on the Software, or otherwise reduce the Software to any humanly perceivable form nor permit any third party not authorized by us to do so.

From time to time, EPT will deliver new release versions of the Software, which releases may include updated user documentation (collectively, the "Updates"). The Updates shall be deemed to constitute part of the Software and shall be subject to the same terms and conditions of this agreement. You may be required to upgrade your computer, peripherals and other Electronic Device to utilize the Updates. Prior versions of the Software may no longer operate properly without installation of the Updates and EPT shall not be responsible to provide support for prior versions of the Software.

You may copy the Software programs as necessary for backup and archival purposes and as is essential to use them on a computer or computer network, as described below. You may not otherwise copy the Software for any purpose. You agree not to remove, nor permit the removal of any proprietary notice or legend contained on or in the Software, and will include all notices included in and on the original media in and on all copies made by you.

All right, title and interest in or related to the Software, is and will remain the exclusive property of us and our third party licensors, including all rights in any copy, translation, modification, adaptation, or derivation of the Software, including any improvement or developments of the Software.

2. **MAINTENANCE AND SUPPORT.** Each year during the term of this Agreement, you shall pay an Annual Maintenance Fee for each license issued to you pursuant to the Merchant Processing Agreement. If the Annual Maintenance Fee is not timely paid, you will not receive necessary updates and modifications and the Software may not work correctly or perform properly.
3. **AUTHORIZED USE.** You may use each licensed copy of the Software programs on a single computer at a time or, alternatively, on a network server solely for internal distribution to "client" computers on the network provided that you have licensed one (1) additional copy of Software for each "client" computer to which the Software is distributed at one time. The Software requires the entry of codes in order to operate outside of an initial period of thirty (30) days. You acknowledge that a signed copy of this Agreement must be sent, via fax, email, or by delivering the original signed version of this agreement to us in order to receive the codes required to operate the software after the initial period.
4. **CONFIDENTIALITY.** For purposes of this Agreement, **"Confidential Information"** means any data or information obtained from one party hereunder and provided to the other party, that is valuable to its owner and not generally known by the public, including without limitation, any data or information defined herein as a Trade Secret, but which is determined by a court of competent

jurisdiction not to rise to the level of a trade secret under applicable law. **“Proprietary Information”** means, collectively, Confidential Information and Trade Secrets. **“Software”** means the InfoTouch computer program in object form. **“Trade Secret”** means information without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

You acknowledge and agree that during the term of this Agreement you will have access to and disclose to the other Proprietary Information. You acknowledge that the object code of the Software contains Trade Secret of us or our Licensors and source code of the Software is a Trade Secret of us or our Licensor. You covenants and agrees that you shall not, directly or indirectly, (i) disclose, divulge, distribute, publish, reproduce, decompile, reverse engineer, transmit or transfer to others any Proprietary Information, or any portions thereof, by any means or in any form, (ii) make use of the Proprietary Information other than as expressly permitted under this Agreement, or (iii) disclose, in whole or in part, any of the Proprietary Information to any individual, entity or other person, except to those of your employees or representatives who (a) require access for your authorized use of the Proprietary Information, and (b) agree to comply with the use and non-disclosure restrictions stated in this Agreement. You may not use trade secret information contained in the Software to develop computer programs that interface or interact with the Software. Upon request, Recipient shall cause its employees and representatives to execute appropriate confidentiality agreements. If an unauthorized use or disclosure occurs, you will immediately notify EPT and assist it in recovering the Proprietary Information and prevent its subsequent unauthorized use or dissemination. The restrictions set forth herein shall continue (i) with respect to the Trade Secrets for as long as such information continues to be a Trade Secret under applicable law, and (ii) with respect to Confidential Information, for a period of five (5) years from the date of expiration or termination of this Agreement.

5. **INFRINGEMENT WARRANTY AND INDEMNITY.** We warrant to you that: (a) we have title to, or the authority to grant sublicenses to, the Software and (b) the Software, as delivered by us, will not infringe any copyright, patent, trade secret, or other intellectual property rights enforceable in the United States. We will defend you against claims of third parties that the Software infringes copyright, patent, trade secret, or other intellectual property rights enforceable in the United States and will pay all damages and costs finally awarded in any such suit or proceeding. Our obligation to defend and indemnify you from any claim is conditioned upon you promptly notifying us in writing of the claim, permitting us to control the defense and settlement of the claim, and providing to us, at our expense for out-of-pocket expenses, reasonable assistance in defending and settling the claim. If, as a result of such a claim, your use of the Software is enjoined, temporarily or permanently, we will, at our sole option and expense, promptly either: (i) procure for you the right to continue using the affected Software, (ii) modify the affected Software so as to make it non-infringing, or

(iii) replace the Software with a non-infringing program of equal or better performance. If we determine that none of the foregoing is reasonably available, we may elect to terminate your license to use the affected Software and refund the license fees paid by you for the Software, prorated based on a five-year useful life commencing on initial delivery. Termination shall not affect our indemnity obligations. Notwithstanding the foregoing, we will have no liability for any claim arising out of your modification of the Software, your use of Software with or on computers, peripherals, or operating system programs not specified by us, or your use of other than the most current version of Software if a non-infringing version has been made generally available by us, if such claim would have been avoided but for such act or omission by you. **THESE REMEDIES ARE YOUR EXCLUSIVE REMEDIES FOR BREACH OF THE WARRANTIES CONTAINED IN THIS PARAGRAPH.**

6. **DISCLAIMER OF WARRANTIES.** THE SOFTWARE IS PROVIDED TO YOU, AS SUBLICENSEE, IN “AS-IS” CONDITION WITH NO WARRANTY. FOR ITSELF AND ITS LICENSORS, EPT DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, MEDIA, AND RELATED MATERIALS, INCLUDING ANY REPRESENTATION AND WARRANTY OF QUALITY, SECURITY, OR ACCURACY AND THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NONINFRINGEMENT. EPT DOES NOT WARRANT THAT THE SOFTWARE AND RELATED MATERIALS ARE FREE FROM BUGS, VIRUSES, ERRORS, OR OTHER DEFECTS. IF SUBLICENSEE IS A RESIDENT OF A JURISDICTION THAT DOES NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, THE ABOVE EXCLUSIONS DO NOT APPLY, AND THE IMPLIED WARRANTIES ARE LIMITED IN DURATION TO SIXTY (60) DAYS FROM THE EFFECTIVE DATE. IF SUBLICENSEE IS A RESIDENT OF A JURISDICTION THAT DOES NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION DOES NOT APPLY. THIS WARRANTY MAY GIVE SUBLICENSEE SPECIFIC LEGAL RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.
7. **LIMITATION OF LIABILITY.** IN NO EVENT WILL EPT OR ITS LICENSORS, THEIR SUBSIDIARIES, OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES OF ANY OF THE FOREGOING BE LIABLE TO YOU UNDER ANY CLAIM ALLEGING, AMONG OTHER THINGS, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE), WHETHER FORESEEABLE OR UNFORESEEABLE, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, OR SERVICES, REGARDLESS OF THE BASIS OF THE CLAIM AND EVEN IF

EPT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. EPT'S CUMULATIVE LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL BE LIMITED TO THE AMOUNT OF MONEY PAID TO EPT FOR THE PURCHASE OF THE LICENSE OF THE SOFTWARE THAT CAUSED THE DAMAGES. SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ACCORDINGLY, THE LIMITATIONS AND EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO SUBLICENSEE. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN EPT AND YOU. EPT WOULD NOT HAVE PROVIDED THE SOFTWARE WITHOUT SUCH LIMITATIONS.

8. **ASSIGNMENT OF LICENSE.** You may not rent, or sublicense (including offering the Software to third parties on an applications service provider or time-sharing basis), assign, give away, loan, resell for profit, or distribute the Software, the Media, or related materials or create derivative works based upon the Software or any part thereof. Sublicensee may not assign or transfer its rights and obligations under this Agreement and any purported assignment or transfer shall be null and void.
- 9 **EXPORT RESTRICTIONS.** Sublicensee acknowledges and agrees that the Software is subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations ("the Acts"). Sublicensee agrees and certifies that neither the Software nor any direct product thereof is being or will be used for any purpose prohibited by the Acts. Sublicensee agrees and certifies that Sublicensee is not a citizen or permanent resident of Cuba, Iran, North Korea, Libya, Sudan or Syria.
10. **U.S. GOVERNMENT.** The Software is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (OCT 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and the Department of Defense Federal Acquisition Regulations Sections 252.227-7014 (a) (1), (5). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227-7202-1 through 227-7202-4 (JUNE 1995), all U.S. Government End Users acquire the Software (or Licensed Product) with only those rights set forth herein. InfoTouch Corporation, 154 Technology Parkway, Suite 280, Norcross, GA 30092.
11. **NO LIMITATIONS.** This Agreement does not limit any rights that EPT or its Licensors may have under trade secret, copyright, patent, or other laws. THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL NOT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.