

## MASTER PRODUCT AND SERVICES AGREEMENT

This Master Product and Services Agreement (the “**Agreement**”) is made and entered into as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), between \_\_\_\_\_, a \_\_\_\_\_ (the “**Customer**”), and POS REMARKETING GROUP, INC., an Illinois corporation (the “**Company**”).

### 1. Products and Services.

(a) This Agreement shall apply to all products and services provided to the Customer by the Company. Each order hereunder shall be evidenced by a Statement of Work substantially in the form of **Exhibit A** attached hereto (a “**Statement of Work**”) signed by the parties, which Statement of Work will set forth the products and the scope of services to be provided by the Company, the materials and services to be provided by the Customer (if any), and the amounts payable to the Company by the Customer in connection therewith. The Company will provide all equipment and materials necessary for completion of any services, unless otherwise stated in the applicable Statement of Work.

(b) Either party may request a change to the products or services (each, a “**Change Request**”) which request shall specify the changes in reasonable detail to enable the other party to evaluate it. No Change Request shall be effective unless an appropriate amendment to the applicable Statement of Work is signed by the parties.

**2. Prices; Payment.** Prices for the products and services shall be as set forth in the applicable Statement of Work. The Company shall invoice the Customer for products at the time of shipment thereof, and shall invoice the Customer monthly in arrears for all services. All invoices are payable net \_\_ days from the date of the invoice. The Company reserves the right to charge interest at the rate of 1.5% per month on any overdue invoice.

### 3. Limited Warranties; Remedies; Disclaimer.

(a) The Company warrants that (i) the products sold under each Statement of Work shall conform to the specifications set forth therein, and (ii) it shall perform the services under each Statement of Work in a good, workmanlike, and timely manner by qualified persons. If products sold under a Statement of Work are covered by a manufacturer’s warranty, then such warranty shall apply with respect to such products in lieu of the limited warranty provided herein, and it shall be the Customer’s responsibility to obtain warranty service directly from such manufacturer unless the applicable Statement of Work provides that the Company shall do so on the Customer’s behalf.

(b) The Customer’s sole remedy for any breach of the foregoing limited warranties with respect to non-conforming products shall be, at the Company’s option, the repair or replacement thereof; provided, however, that the Customer notifies the Company in writing of any non-conforming products within \_\_\_\_\_ (\_\_) days following the delivery thereof. Upon completion of any services, Customer shall either accept or reject such services in writing,

and if the Customer rejects any non-conforming services, the Customer's sole remedy shall be the Company's re-performance of such non-conforming services.

(c) THE FOREGOING EXPRESS LIMITED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF COMPANY, AND THE COMPANY NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH THE PRODUCTS OR SERVICES.

#### **4. Customer Responsibilities.**

(a) If installation services are provided by the Company, the Customer shall be responsible for providing a suitable installation environment for the products, including, without limitation, timely site preparation including, the provision for adequate electrical power and a sufficient number and type of electrical outlets, and sufficient workspace for Company's personnel to perform installation services. Customer shall be responsible for hardware cabling except as specifically set forth in a Statement of Work. If products are provided by the Company, the products shall be deemed accepted by Customer when they have been physically delivered to the Customer. If installation services are provided, the products and services shall be deemed accepted by Customer when the products have been installed and made ready for use at the Customer's site in accordance with the manufacturer's installation and operational specifications or those contained in the applicable Statement of Work, as applicable; and the Company has tested the products to ensure that all included hardware and software substantially meet the manufacturer's specifications or those contained in the applicable Statement of Work, as applicable.

(b) Customer acknowledges that the security and protection of the products and data, including protections against unauthorized access, is solely and entirely Customer's responsibility. If the products have persistent connections to the Internet, or process credit or gift card transactions over the Internet, or otherwise have persistent connections to any network where there is potential to unauthorized access, Customer is solely responsible for security. Customer must secure and maintain virus and spyware protection software, which may include, but is not limited to firewalls, passwords, physical security, access control policies, and the like. Customer acknowledges that, to be effective, virus protection and other security software require periodic updates, which Customer must obtain from Customer's supplier or the manufacturer. Company disclaims any warranty, express or implied, that, after the initial installation by Company of the products, the products or data will remain virus-free. Support or services necessitated by computer viruses, or by any failure or breach of Customer's security to the products or data, including, without limitation, damage caused by hackers or persons lacking authorized access, are not covered under this Agreement, and will be supplied only upon Customer's request and on a reasonable efforts basis, on a time-and-materials basis (unless otherwise agreed to at the time). Customer waives any claims against Company, to the extent arising from Customer's failure to have or maintain current virus or spyware protection, or to the extent arising as a result of a failure or breach of Customer's security for its systems or data, or

as a direct result of unauthorized access to Customer's systems or data by persons other than Company's personnel. **Customer acknowledges that credit card providers, banks, and credit card processing companies implement and require specific policies in conjunction with their cards and services. Customer shall be solely responsible for compliance with all policies, rules, regulations, and procedures required by the credit card companies, banks, and/or processors Customer elects to accept or utilize.**

(c) During the term of this Agreement, and for a period of two (2) years thereafter, Customer shall not, directly or indirectly, solicit, hire or otherwise engage in any manner whatsoever, any of the Company's employees. If the Buyer violates this provision, the Buyer shall pay the seller the sum of one year's current salary of each employee hired or engaged as liquidated damages and not as a penalty.

## **5. Term and Termination; Transition Services.**

(a) This Agreement shall commence on the Effective Date, and shall continue until the first (1<sup>st</sup>) anniversary of the Effective Date, and thereafter shall automatically renew for successive one year periods unless either party gives written notice to the other of its intent not to renew this Agreement not later than thirty (30) days prior to the end of initial term or any renewal term. Notwithstanding the foregoing, this Agreement or a Statement of Work may be terminated by either party upon a material breach hereof or thereof by the other party; provided that the party claiming such breach shall give the other party written notice thereof setting forth the alleged breach in reasonable detail, and the other party shall have thirty (30) days from the date of its receipt of such notice to cure any alleged breach.

(b) Unless this Agreement or any Statement of Work is terminated by the Company as a result of the Customer's material breach hereof or thereof, the Company shall provide the Customer with reasonable assistance at the Company's then prevailing fee schedule, for a reasonable period not to exceed sixty (60) days, in order to carry out an orderly transition of the services either to the Customer or to another vendor.

## **6. Confidentiality.**

(a) For the purposes of this Agreement, "**Confidential Information**" means any information disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") in any form or medium, which is either specified in writing at the time of disclosure in as being confidential or which ought reasonably, in light of the circumstances, to be treated as confidential, whether such information is communicated orally, in writing or by observation, including by drawings or inspection of parts or equipment. Confidential Information includes, without limitation, software, designs, samples, technical documentation, product or service specifications or strategies, pricing information, information relating to customers, inventions or potential improvements thereto, trade secrets, unreleased software applications, methodologies, techniques, processes, and other know-how, and design and performance specifications of the Disclosing Party, and the terms and conditions of this Agreement. The term "Confidential Information" does not include any information which information which is now, or hereafter becomes publicly known or available through lawful means; is rightfully in the Receiving

Party's possession, as evidenced by its records; is disclosed to the Receiving Party without confidential or proprietary restriction by a third party who rightfully possesses the information (without confidential or proprietary restriction); or is independently developed by the Receiving Party without any use of the Disclosing Party's Confidential Information.

(b) The Receiving Party shall use commercially reasonable efforts not to use or disclose the Disclosing Party's Confidential Information except to the extent necessary to perform its obligations or enforce its rights under this Agreement or any Statement of Work.

(c) Upon the termination of this Agreement, or at any time upon the Disclosing Party's request, the Receiving Party shall return to the Disclosing Party all copies of the Disclosing Party's Confidential Information in the Receiving Party's possession or control, together with any notes or analyses prepared by the Receiving Party based on any of the Disclosing Party's Confidential Information.

(d) Each party acknowledges and agrees that any breach by it of this Section 5 will cause the other party injury and damage for which it cannot be adequately compensated in monetary damages. Each party, therefore, expressly agrees that the other party shall be entitled to seek injunctive and/or other equitable relief to prevent any anticipatory or continuing breach of this Section 5. Nothing herein shall be construed as a waiver by either party of any right it may now have or hereafter acquire to monetary damages by reason of any injury to its property, business or reputation or otherwise arising out of any breach by the other party of this Section 5.

**7. Intellectual Property.** All designs, developments, improvements, processes, software programs, documentation, techniques, know-how, or other intellectual property created by the Company pursuant to a Statement of Work ("**Work Product**") and all intellectual property rights therein are and shall continue to be the sole and absolute property of the Company or its licensors; provided, however, that the Company hereby grants to the Customer a non-exclusive, perpetual, royalty-free, transferable right and license to use the Work Product in connection with its use of the products and services.

**8. LIMITATION OF LIABILITY.** IN NO EVENT SHALL COMPANY BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY STATEMENT OF WORK. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME, OR PROFIT, OR LOSSES SUSTAINED AS A RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON OR LOSS OF OR DAMAGE TO PROPERTY.

**9. Insurance.** During the performance of any services for the Customer pursuant to this Agreement, the Company shall maintain, at its expense, appropriate insurance coverages.

**10. Entire Agreement; Modification; Governing Law.**

(a) This Agreement, together with any Statement of Work, constitutes the complete and exclusive statement of the terms and conditions of the agreement between the parties with respect to the subject matter hereof, and supersedes all oral or written proposals and all other



**14. CONSENT TO JURISDICTION AND VENUE.** THE PARTIES AGREE THAT ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY, SHALL BE INSTITUTED SOLELY IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, OR ANY COURT OF THE STATE OF ILLINOIS LOCATED IN COOK COUNTY, AND EACH PARTY IRREVOCABLY SUBMITS AND CONSENTS TO THE EXCLUSIVE JURISDICTION OF THOSE COURTS AND WAIVES ANY AND ALL OBJECTIONS TO JURISDICTION OR VENUE THAT ANY SUCH PARTY MAY HAVE UNDER THE LAWS OF THE STATE OF ILLINOIS OR OTHERWISE.

**15. Severability.** In the event any part of this Agreement is found to be invalid, illegal or unenforceable in any respect, it is the intent of the parties that a court so finding shall revise or modify the provisions hereof found to be invalid, illegal or unenforceable, whether such provision be the geographical area or the period of time to which this Agreement applies or otherwise, and the remaining provisions hereof shall nevertheless be valid and binding with the same force and effect as if the invalid, illegal or unenforceable part or parts were originally deleted.

**16. Force Majeure.** Except for a party's obligation to pay money, neither party shall be responsible for any delay or failure with respect to its performance hereunder if due to or arising from any fire, labor dispute, accident, government act, act of God, or any other event beyond its control. In the event of any such delay, the time for performance shall be extended for a period equal to the time lost by reason of the delay.

**17. Counterparts; Electronic Delivery.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A counterpart of this Agreement executed and delivered by facsimile or electronic mail shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or electronic mail shall also deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties hereto have executed this Master Product and Services Agreement as of the Effective Date through their duly authorized representatives.

POS REMARKETING GROUP, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_