

POS Service LLC

Optional Software Support Agreement - Terms and Conditions

Revision 01/01/2018

BY ACCEPTING THE SERVICE CONTRACT CHARGES DESCRIBED ON YOUR INVOICE, YOU AGREE TO BE BOUND BY AND ACCEPT THE TERMS AND CONDITIONS HEREIN. THIS AGREEMENT IS BETWEEN YOU ("CUSTOMER") AND VENTEC, INC ("POS SERVICES LLC", "WE").

1. **Software Covered ("Covered Software"):** When we refer to "Software" in this Agreement, we mean the covered software to be maintained by POS SERVICES LLC.

2. **Scope of Services:**

a. It is the intent of this Agreement that POS SERVICES LLC will provide Software Support and be responsive to your service needs. The Principle Period of Support ("PPS") is Monday through Friday 9:00 a.m. to 5:00 p.m., excluding regularly observed holidays. PPS means the principal hours during which services are rendered under this Agreement. In most cases, a POS SERVICES LLC technician will respond to a service call within two (2) hours of receiving your call (during the PPS).

b. **Limits of Services.** This Agreement extends only to uses for which the Software was designed. The services POS SERVICES LLC agrees to provide under this Agreement are repair services that are necessary because of any existing defect or because a defect occurs in materials or workmanship in the Covered Software. Preventive maintenance is not included. **Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than POS SERVICES LLC are not included.** POS SERVICES LLC is not obligated to repair any Software which has been damaged as a result of: (i) accident, misuse, or abuse of the Software (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions), (ii) an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, fire, hurricanes, or (iii) the moving of the Software from one location to another, (iii) Theft.

LIMITATION OF LIABILITY. POS SERVICES LLC (INCLUDING POS SERVICES LLC' PARENTS, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS) DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING ANY LIABILITY FOR SOFTWARE NOT BEING AVAILABLE FOR USE, LOST OR CORRUPTED DATA OR SOFTWARE. POS SERVICES LLC WILL NOT HAVE ANY LIABILITY FOR ANY DAMAGES ARISING FROM THE USE OF THE SOFTWARE IN ANY HIGH RISK ACTIVITY, INCLUDING, BUT NOT LIMITED TO, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, MEDICAL SYSTEMS, LIFE SUPPORT OR WEAPONS SYSTEMS. POS SERVICES LLC WILL NOT BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS, OR OTHER INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN.

CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCTS OR SERVICES, POS SERVICES LLC IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PURCHASE OF PRODUCTS AND/OR SERVICES UNDER THIS AGREEMENT.

THE FOREGOING LIMITATIONS APPLY REGARDLESS OF THE CAUSE OR CIRCUMSTANCES GIVING RISE TO SUCH LOSS, DAMAGE OR LIABILITY, EVEN IF SUCH LOSS, DAMAGE OR LIABILITY IS BASED ON NEGLIGENCE OR OTHER TORTS OR BREACH OF CONTRACT (INCLUDING FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM).

With regard to any services that are not within the coverage of this Agreement, it will be within POS SERVICES LLC' discretion whether to perform the services, and, if POS SERVICES LLC elects to perform the services, the services will be subject to an additional charge to be paid by you.

3. Your Responsibilities.

To receive service, you are responsible for complying with the following:

- a. **Valid Support Contract.** POS SERVICES LLC must have received payment for the Service Contract within thirty (30) days of the date of invoice. Customer shall pay an additional interest fee of 1.5% per month (19.56% per year) for invoices not paid within such thirty (30) day period.
- b. **Report the Problem.** Call toll free 877-852-1144. These phone lines are answered Monday through Friday 9:00 a.m. to 5:00 p.m., excluding regularly observed holidays. In most cases, a POS SERVICES LLC technician will respond to a service call within two (2) hours of receiving your call (during the PPM). You will help the technician serve you better if you have the Software's serial number or service tag number as well as its manufacturer and model number ready when you call. You can also report a problem by visiting the POS SERVICES LLC web site at www.POSServices.com and clicking the "Support" link. When reporting damaged Software after hours (5pm to 8am) unless it is an emergency you will leave a message or go to our web site to submit your information for an RMA request. A technician will get back with you during regular business hours. These items constitutes an emergency and a technician will get back with you.

HELP DESK PHONE SUPPORT – DURING HOLIDAY AND AFTER HOURS

Tech Support: (877) 852-1144

Assistance with issues that interfere with your ability to substantially serve your customers. All other calls are handled during normal help desk hours. Examples of impaired issues are: My base station is non-responsive. My kitchen printer isn't printing.

Calls made after hours activate an automated notification system. Leave your name, the establishment name, a call back number, and a description of problem including how this is impacting your ability to serve your customers. Failure to leave all information may result in delayed call back time.

- c. **Cooperate with the Technician.** Many problems and errors can be corrected over the phone as a result of close cooperation between the user and the technician. If a technician is required to come on site, he must have access to the Software and any machines, attachments, accessories, or software necessary to perform the required service.
 - d. **Network.** The installation, termination, and certification of network cabling and /or wireless LAN
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are the responsibility of the Customer. All network cabling and /or wireless LAN must adhere to prescribed specifications.

4. General Terms:

- a. **Term and Renewal:** This Agreement becomes effective upon payment of your initial POS SERVICES LLC Service Contract invoice and it remains in effect indefinitely. The anniversary date of the agreement is the first day of the month during which the initial invoice is dated.
 - b. **Cancellation:** The Agreement may be terminated by either party by providing at least thirty (90) days written notice. Depending on the length of the agreement that was signed different cancelation times and cost will vary.
 - c. **Charges:** Monthly Service Contract charges are paid in advance and are calculated as the sum of the charges of all the items listed on the current Software List. You will pay POS Services LLC by recurring ACH. See attached form.
 - d. **Entire Agreement:** This Agreement is the entire agreement between you and POS SERVICES LLC with respect to its subject matter and none of POS SERVICES LLC' employees or agents may orally vary the terms and conditions of this Agreement.
 - e. **Warranty Exclusion:** POS SERVICES LLC makes no warranties or conditions, either express or implied, including, but not limited to, any implied warranties or conditions of merchantability and fitness for a particular purpose. POS SERVICES LLC expressly disclaims all warranties and conditions.
 - f. **Miscellaneous.** If any provision of this Agreement is void or unenforceable, the parties agree to delete it and agree that the remainder of the Agreement will continue to be in effect. POS SERVICES LLC is not liable for failure or delay in performance due to any cause beyond its control. Neither POS SERVICES LLC nor you may institute any action in any form arising out of this Agreement more than six (6) months after the cause of action has arisen, or in the case of nonpayment, more than six (6) months from the date of last payment. This agreement will be governed by the laws of the state of Kansas.
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5. **Holidays:**

TheSupport Plan excludes weekends and the following designated holidays:

- New Year's Day (January 1st)
- Martin Luther King's Birthday (3rd Monday in January)
- Memorial Day (Last Monday in May)
- Independence Day (July 4th)
- Labor Day (1st Monday in September)
- Thanksgiving Day (4th Thursday in November)
- The Day After Thanksgiving (5th Friday in November)
- Christmas Eve (December 24th)
- Christmas Day (December 25th)

6. **No Support Contract requested.**

If you choose not to have a service contract the charge per phone call is \$125.00 per incident.

X _____ Date: ____/____/20____

7. COST

	Expanded Software Support			Total with Processing
	Computers	Support Only	Program	Discounting
1	\$40.00		\$25.00	\$65.00
2	\$50.00		\$50.00	\$100.00
3	\$60.00		\$75.00	\$135.00
4	\$70.00		\$100.00	\$170.00
5	\$80.00		\$125.00	\$205.00
6	\$90.00		\$150.00	\$240.00
7	\$100.00		\$175.00	\$275.00
8	\$110.00		\$200.00	\$300.00
9	\$120.00		\$225.00	\$345.00

- A. We will discount the software support per month if we are your merchant service provider.
- B. You can also receive discount for multi-site locations.
- C. Monthly fees will be reviewed yearly (Jan 1st) using the **Consumer Price Index (CPI)**. Thus pricing is subject to change using CPI index with a cap at 5% yearly.

8. Issues NOT COVERED under the Software Agreement

This Support Agreement is limited to software only.

The following are not covered and may be subject to additional charges:

- a. Credit Card Software Slipstream or Data Cap is not included or any external hardware devices needed to run credit cards.
- b. Issues caused by Networking:
 - Issues related to, caused by, or resulting from network non-connectivity (power, wiring, or configuration).
 - Issues related to, caused by, or resulting from internet connectivity problems
 - Problems related to other Software connected to the network. Examples include but are not limited to office desktop or laptops, wireless access points, music jukeboxes, and video games. Problems or issues caused by or resulting from unauthorized changes made to 2TouchPOS software. Problems or issues caused by or related to computer viruses.
- c. Credit Card Processing
 - Issues resolved via third party credit card software such as PC Charge and Slipstream or DataCAP are not covered.
 - Issues resolved via the credit card processor are not covered.
- d. Onsite support is not covered.***
- e. Damages or losses incurred during the resolution or completion of orders, support cases or assisted hardware repair.
- f. The support desk is not a replacement for formal training.

9. SECURITY AND PCI COMPLIANCE

The security and protection of the point of sale network, data, and applications on that network is solely and entirely the responsibility of the customer. The 2TouchPOS PA-DSS Implementation Guide can assist in securing the point of sale system. Additional precautions are recommended when 2TouchPOS is used to transmit data such as credit card or gift card transactions over the internet. The customer is solely and entirely responsible for the security of their computer network,

and their data against unauthorized access. Any damages or support costs as a result of any unauthorized access are not covered by this support agreement.

10. DATA RECOVERY

POS Services LLC is not responsible for loss of any and all data. The customer is urged to back-up data on a regular basis to prevent such catastrophes. POS Services LLC is not responsible for re-creation of any lost data due to computer malfunctions.

- a. **Software/Data Backup.** You understand and agree that POS SERVICES LLC is not responsible for any lost or corrupted software or data. **POS SERVICES LLC strongly recommends that you maintain a complete data backup and disaster recovery plan.** Any attempted data recovery and/or installation and configuration of application software we perform will be subject to an additional charge to be paid by you.

11. SECURITY OF DATA

The security and protection of the POS Services LLC network and the data and applications on that network is solely and entirely the responsibility of the customer. A properly configured firewall is required for each site using a persistent connection to the Public Internet or any private internal network where there is a potential for unauthorized access to the POS Services LLC network. The customer is solely and entirely responsible for the security of their POS Services LLC network, and their data against unauthorized access and any damages and support costs as a result of any unauthorized access. "THIS IS MOST CLEARLY AN ISSUE (but not limited to) THE FOLLOWING SCENARIOS: Systems with persistent connections to the internet transmitting credit card or gift card transactions over the internet using POS Services LLC or 3rd party SSL.

12. CREDIT CARD INTERGRATION

The customer will be responsible for a reprogramming fee and/or a cancelation from POS Services LLC if the customer switches merchant service prior to the end of the merchant contract with our current merchant services contract. These fees can range from \$250 to reprogram software to \$1500 for switching merchant services. The payment for switching or canceling shall be prepaid before POS Services LLC will switch the merchant service in the software. These fees are above and beyond any bank fees that might be imposed by the issuing bank if you choose to cancel your merchant services with the issuing bank.

POS Service LLC
7275 W 162nd Street Suite 107
Stilwell KS 66085
913-212-8274

Agreement: ACH Authorization for CCD Transactions

This **Agreement** governs ACH transactions initiated by POS Services LLC to credit or charge the **Company** indicated below. Both parties agree to be bound by NACHA Operating Rules as they pertain to all ACH transactions initiated by POS Services LLC that credit or debit the **Company** bank account listed below, and acknowledge that the origination of ACH transactions to the listed account must comply with provisions of U.S. law.

This **Agreement** provides authorization for individual or recurring CCD transactions to be initiated by POS Services LLC individually authorized using the methods designated below. This **Agreement** will remain in effect until **Company** cancels it in writing. Both parties agree that this **Agreement** in conjunction with any of the designated methods constitutes authorization to debit **Company's** business bank account, and **Company** agrees not to dispute any debits with its bank provided the transaction(s) correspond to the terms indicated in this **Agreement**.

Please complete the information below: *(New Installs will start Months after install)*

Company Name _____ **(Company) Service Contract Amount: \$** _____
Billing Address _____ Phone# _____
City, State, Zip _____ Email _____

Company Name on Account: _____
Bank Name: _____
Bank Account Number: _____
Bank Routing #: _____
Bank City/State: _____

This Business Bank Account is Enabled for ACH Transactions Yes No

Individual Transaction or Recurring Schedule Authorization Methods (check all that apply):

Phone Fax Email Written Other _____

I Authorize POS Services LLC to initiate ACH Debits and Credits to the bank account indicated above, provided each transaction is initiated according to the terms of this Agreement.

SIGNATURE _____ DATE _____

NAME _____ TITLE _____

I certify that I am an authorized representative of the Company indicated above and that I have the authority to enter into this Agreement on the Company's behalf. Company understands that this authorization will remain in effect until it is canceled in writing, and agrees to notify POS Services LLC in writing at least 15 days in advance of any changes in its account information or termination of this authorization. Company understands that because these are electronic transactions, these funds may be withdrawn from its account as soon as the date an individual transaction is authorized, and that it will have limited time to report and dispute errors. In the case of an ACH Transaction being rejected for Non-Sufficient Funds (NSF) Company understand that POS Services LLC may at its discretion attempt to process the charge again within 30 days, and agrees to an additional \$20.00 charge for each attempt returned NSF which will be initiated as a separate transaction from the authorized payment. Company has certified that the above business bank account is enabled for ACH transactions, and agrees to reimburse POS Services LLC for all penalties and fees incurred as a result of Company's bank rejecting ACH debits or credits as a result of the account not being properly configured for ACH transactions. Company acknowledges that the origination of ACH transactions to its account must comply with the provisions of U.S. law.