

APTITO POINT OF SALE SYSTEM SERVICE AGREEMENT


☐ New Location ☐ Additional Location

 3363 NE 163rd Street, Suite 705 • North Miami Beach, FL 33160 • (877) 644-7597
<http://www.apitulo.com>

► Business Information

Legal Name (as it appears on your income tax return):		Name of Account (Doing Business As):	
Legal Address:		Physical Address (Please check here <input type="checkbox"/> if same as Legal Address):	
City:	State:	Zip:	
City:	State:	Zip:	
Phone #:	Contact:	DBA Phone #:	Fax #:
Must Choose One Mailing Address: <input type="checkbox"/> DBA Address <input type="checkbox"/> Legal Address		E-Mail Address:	
Website Address: www.			
Federal Tax # (as it appears on your income tax return)		# of Locations: Years in Business:	
Type of Ownership: <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other: _____			
Bank Reference:		Contact: Phone #:	

► Owners or Officers

Name (Principal 1):		% of Equity Ownership:		Name (Principal 2):		% of Equity Ownership:	
Social Security Number:	Date of Birth:	Telephone #:		Social Security Number:	Date of Birth:	Telephone #:	
Residence Address:				Residence Address:			
City:	State:	Zip:		City:	State:	Zip:	

► Enrollment Options

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

I. BASE PACKAGE

1 APPLE IPAD®
 1 APTITO POINT OF SALE SOFTWARE (SINGLE LICENSE)
 1 APTITO ONLINE BACK-OFFICE MANAGEMENT (CORP LICENSE)
 1 APTITO POS ENCLOSURE
 1 MAGNETIC STRIPE READER
 1 CASH DRAWER
 1 RECEIPT PRINTER
 1 KITCHEN PRINTER
 1 DATABASE CLOUD HOSTING

☐ APTITO MPOS: NUMBER OF SYSTEMS _____ x \$ _99.00/month

TOTAL PRICE: \$ _____ /month plus local, federal, and state taxes

The Term of this Service Agreement is sixty (60) months. See Terms and Conditions for further details.

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

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

PRODUCT/SERVICE	MODEL	SERIAL NUMBER	QUANTITY	MONTHLY COST	TOTAL COST
Apple iPad®					
Receipt Printer (Thermal)					
Kitchen Printer (Impact)					
Cash Drawer					
Aptito POS Enclosure					
Aptito Menu Enclosure					
Aptito Kiosk Stand					
Aptito Customer Display Pole					
EMV Pin-Pad (Bluetooth)					
Wi-Fi Network Router					
Wi-Fi Range Extender (Booster)					
Barcode Scanner					
Aptito Point of Sale Software					
Aptito Digital Menu Software					
Aptito Self-Serve Kiosk Software					
Installation Services					
Replacement Program					
Other: _____					
TOTAL MONTHLY OPTIONAL ADD-ONS:					
TOTAL MONTHLY SERVICE FEE (SECTION I + SECTION II) plus local, federal, and state taxes:					

III. OPTIONAL ACCESSORY PURCHASES

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

PRODUCT	MODEL	SERIAL NUMBER	QUANTITY	PRICE	TOTAL COST
Apple iPad®					
Receipt Printer (Thermal)					
Kitchen Printer (Impact)					
Cash Drawer					
Aptito POS Enclosure					
Aptito Menu Enclosure					
Aptito Kiosk Stand					
Aptito Customer Display Pole					
EMV Pin-Pad (Bluetooth)					
Wi-Fi Network Router					
Wi-Fi Range Extender (Booster)					
Barcode Scanner					
Other: _____					
TOTAL OPTIONAL ACCESSORIES:					

► Authorization and Signature

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

Credit Inquiry Authorization: Authorization is hereby granted by the Merchant representative who has signed below to Aptito, a division of TOT, its affiliates, subsidiaries, designated assignees, or third party providers, to obtain a consumer credit report through a credit-reporting agency chosen by Aptito. Authorized Merchant Representative understands and agrees that Aptito intends to use the consumer credit report for the purposes of evaluating its financial readiness to enter into this Service Agreement. Authorized Merchant Representative understands that this credit report will be retained on file at the TOT office for use only by TOT staff. This information will not be disclosed to anyone by TOT without written consent unless required by law. Authorized Merchant Representatives signature below authorizes the release to the credit-reporting agency of financial information, which has been supplied to TOT in connection with such an evaluation. Authorization is further granted to the credit-reporting agency to use photo-static reproduction of this form if required to obtain any information necessary to complete a consumer credit report.

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

Print Name:	Print Name:
X	X
Principal 1 – Signature	Principal 2 – Signature
Date	Date

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

AGREED AND ACCEPTED:

Print Name:	Print Name:
X	X
Principal 1 – Signature	Principal 2 – Signature
Date	Date

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

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

Print Name:	Print Name:
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X	X
Principal 1 – Signature	Principal 2 – Signature
Date	Date

Aptito Point-of-Sale ("POS") System Service Agreement ("Service Agreement or Agreement")

THIS SERVICE AGREEMENT is made on the date as set forth above, by and between **Aptito, LLC, a division of TOT Group, Inc. (collectively referred to as "Aptito")** with its principal place of business at **3363 NE 163rd Street, Suite 705, North Miami Beach, FL 33160** and Merchant with its principal place of business located at the address as set forth in the Business Information section of this Agreement.

WHEREAS, Aptito has placed certain Equipment at the Merchant Location for the exclusive use by Merchant;

WHEREAS, Merchant now desires to purchase services for such Equipment and Aptito agrees to supply such services to the Merchant on the terms and conditions set forth below;

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

1. Definitions. (a) Equipment shall mean any product listed in this Agreement as a Base Package or Add-Ons (Section I and II). (b) **Merchant Agreement** shall mean the separate Merchant Transaction Processing Agreement and Terms and Conditions between Aptito and the Merchant, attached as Exhibit A hereto, for the purpose of providing merchant processing services. (c) **Merchant Authorized Representative** shall mean the individual authorized to enter into agreements on behalf of the Merchant and who signs this Agreement on behalf of the Merchant. (d) **Merchant Location** shall mean the address of the Merchant where the Equipment is physically located listed in Business Information section of this Agreement. (e) **Software** shall mean the current version of the proprietary Aptito owned, developed, licensed, enhanced, or revised from time to time contained in the Equipment specified in this Agreement. Software as defined under this Agreement does not include Aptito Tableside software.

2. License. (a) Merchant will have a non-exclusive, non-transferrable license to use the Software in its business. Merchant will only have a license subject to the terms of this Agreement; Aptito reserves and retains all rights not granted or extended hereunder. This license is not a license of any trademarks, service marks, trade names, or logos, and does not include any software other than the Software. (b) Merchant may not alter the Software, or reverse engineer decompile, disassemble, or otherwise attempt to derive source code from the Software. Merchant's failure to use the Software during the term of this Agreement shall not relieve Merchant of any of its obligations hereunder. (c) This license does not include any rights to manufacture, copy, sublicense, distribute, transfer or otherwise dispose of any copies of the Software. Nothing contained in this Agreement shall give Merchant any ownership interest, or title to, the Software, source code, and the related documentation (including any adaptation of copies). Merchant has no right to create derivative works, enhancements or modifications to the Software, and if at any time any such are made, all ownership shall vest and remains with Aptito. (d) Merchant acknowledges that the performance of the Software is conditioned on Merchant providing, at its sole cost and expense continued and secure network. (e) This license is expressly made subject to any laws, regulations, orders or other restrictions on the export from the United States of America of Software and Merchant agrees to abide by such limitations.

3. Aptito's Obligations

3.1 Service of Equipment: So long as Merchant is not in default of this Agreement, Aptito shall, for the monthly service charges set forth herein, provide service to the Merchant Location as set forth in this Agreement. (a) **Technical Support:** Merchant shall be entitled to twenty-four (24) hours a day, seven (7) days a week remote technical support for the Equipment. Aptito will use commercially reasonable efforts to answer questions and resolve any problems related to the Equipment and/or Software, but does not guarantee resolution of the problems reported. (b) **Customization:** Merchant shall be entitled to custom development and configuration of the Software. Such customization is done with the assistance of the Merchant who must provide information requested by Aptito. Upon completion of Equipment customization Aptito shall provide Merchant with an online presentation of the Equipment. Upon completion of this presentation, or if the Merchant declines to participate in such presentation, Merchant shall be required to complete a recorded voice verification which shall confirm that the Equipment meets the needs of the business. Merchant authorizes Aptito to record such verification and agrees that no Equipment shall be shipped prior to such verification. Any additional customization after the Equipment has been shipped to the Merchant is expressly excluded from this Agreement. Additional fees may apply. **APTITO DOES NOT WARRANT THAT CUSTOMIZATION WILL BE FREE FROM DEFECTS OR MISTAKES. APTITO EXPRESSLY DISCLAIMS AND MERCHANT AGREES TO HOLD APTITO HARMLESS FOR ANY ERRORS IN THE EQUIPMENT ONCE THE MERCHANT HAS COMPLETED VOICE VERIFICATION.** (c) **Installation/Training:** Merchant shall be entitled to one (1) on-site installation of the Equipment including (1) one cable run to a point-of-sale system located no more than ten feet from the wall/cable connection and without the need to install any cable jacks into the wall (hereto referred to as a "Standard Cable Drop"). Merchant must verify time and place of installation. Additional fees will apply for cable drops in excess of the one provided herein. All on-site (at Merchant Location) installation and training shall be set up and confirmed no less than forty-eight (48) hours in advance of the scheduled training/installation. Such confirmation shall include but not be limited to the time and place of installation/training, and that the owner and/or authorized signer shall be at the Merchant Location. If (i) Merchant cancels or reschedules the appointment less than twenty four (24) hours prior to the confirmed time, (ii) the owner/authorized signer is unavailable at the confirmed time, or (iii) the Merchant location in Aptito's reasonable discretion is not in a condition suitable to conduct the installation/training; a One Hundred Fifty (\$150) Dollar rescheduling/revisit fee shall be charged to the Merchant. **MERCHANT AUTHORIZES APTITO TO LAY ADDITIONAL CABLES AND CABLE LINES THAT DO NOT FIT WITHIN THE DEFINITION OF A STANDARD CABLE DROP AT ITS REASONABLE DISCRETION AT THE TIME OF INSTALLATION. MERCHANT SHALL BE BILLED TWO HUNDRED FORTY NINE (\$249) DOLLARS FOR EACH CABLE DROP THAT DOES NOT FIT WITHIN THE DEFINITION OF STANDARD CABLE DROP AS SET FORTH ABOVE AND FOR EACH CABLE DROP AFTER THE STANDARD CABLE DROP. MERCHANT SHALL BE DEBITED THE AMOUNT FOR ADDITIONAL INSTALLATION AT THE TIME OF THE NEXT BILLING.** (d) **Repair/Replacement:** Upon notification either verbal or written, of malfunction of any Equipment covered under this Agreement, Aptito shall provide remote support to determine if the part is defective and, if so, at Aptito's sole discretion, repair Equipment or supply replacement Equipment. Replacement parts shall be sent to Merchant via priority shipping. All inoperative, repaired, or replaced parts are the property of and shall be returned to Aptito. Failure to return replaced or repaired parts will result in charges to Merchant as referenced in Section 4.6. Merchant's failure to maintain the Equipment as set forth in Section 4 shall result additional charges for the service of Equipment. Merchant shall be responsible for costs of shipping to and from Aptito.

3.2 Non-Standard Services: Aptito may, at its sole discretion, for the additional charges, provide services and make required repair, redesign, reinstall, reconfigure or replace the Equipment when either is required due to causes not attributable to normal wear and tear, including, but not limited to: (a) the failure of Merchant to continually maintain the Merchant Location in conformance with commercially reasonable standards; (b) impairments in the performance of the Equipment resulting from changes in the design of the Equipment made by Merchant or mechanical, electrical, or electronic interconnections made by Merchant; (c) damage caused by accidents, natural disasters or the negligence of, or improper use or misuse of, the Equipment by Merchant; (d) damage or necessity of repair resulting from unauthorized maintenance by Merchant or any third party other than Aptito or its authorized representative; (e) damage or repair necessitated as a result of relocation of the Equipment; (f) change in laws or Association rules that require service, repair, or replacement above normal day to day maintenance; (g) any third party hardware or software in conjunction with the use of the Equipment without Aptito's express written consent; or (h) theft of the Equipment.

4. Merchant Obligations

4.1 Notice of Equipment Failure: Merchant shall notify Aptito's immediately in writing upon Equipment failure or malfunction and shall allow Aptito full and free access to the Equipment and the use of necessary data communications facilities and equipment at no charge to Aptito, subject to Merchant's security rules.

4.2 Receipt of Equipment: Merchant warrants that it has completed the voice verification acknowledging the proper customization of the Equipment prior to shipping and has completed an Installation Sign-Off form acknowledging receipt of the Equipment. Upon signing this form Merchant accepts AS IS, the Equipment, Aptito® Point-of-Sale ("POS") System Service Agreement ("Service Agreement or Agreement") Software, and customization as set forth herein. Any additional customization of equipment after completion of the verification shall be at additional cost to Merchant.

4.3 Merchant's Maintenance Efforts: Merchant shall maintain the Equipment in good operating condition, repair, and appearance, and protect the same from deterioration other than normal wear and tear; shall use the Equipment in the regular course of its business, within its normal operating capacity, without abuse, and shall comply with all laws, regulations, directives, requirements and rules with respect to the use, maintenance and operation of the Equipment and Software; shall use the Equipment and Software solely for business purposes; shall not make any modification, alteration or addition to the Equipment or Software, without the written consent of Aptito; shall not at any time affix, and shall not remove the Equipment from the Merchant Location without the written consent of Aptito, which shall not be unreasonably withheld.

4.4 Merchant Security. Merchant shall be responsible for (a) maintaining virus protection and security for all of its systems, data, and overall network access, and (b) all risk of loss, theft, damage or destruction of the Equipment from any cause whatsoever after taking possession of the Equipment. Merchant acknowledges that security and access to any Equipment located on its premises is solely Merchant's responsibility and agrees to notify Aptito immediately if Equipment is lost, destroyed, stolen or taken by any other person. APTITO DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT, AFTER THE INITIAL INSTALLATION OF THE EQUIPMENT OR ANY SOFTWARE CONTAINED THEREIN, THAT THE EQUIPMENT, SOFTWARE CONTAINED THEREIN, OR CUSTOMER'S DATA WILL REMAIN VIRUS-FREE. MERCHANT WAIVES ANY CLAIMS HEREUNDER AGAINST APTITO TO THE EXTENT ARISING FROM MERCHANT'S FAILURE TO HAVE OR MAINTAIN CURRENT VIRUS PROTECTION, OR TO THE EXTENT ARISING AS A RESULT OF A FAILURE OR BREACH OF CUSTOMER'S SECURITY FOR ITS SYSTEMS OR DATA, OR AS A RESULT OF ANY UNAUTHORIZED ACCESS TO MERCHANT'S SYSTEMS. APTITO FURTHER DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR PROBLEMS RESULTING IN OR RELATED TO MERCHANT'S DECISION TO USE A PARTICULAR INTERNET SERVICE PROVIDER OR RELATED TO ITS ABILITY TO CONNECT TO THE INTERNET. MERCHANT ACKNOWLEDGES THAT ITS; ABILITY TO ACCESS DATA, RECEIVE REMOTE TECHNICAL SUPPORT, AND OPERATE THE EQUIPMENT, MAY BE AFFECTED BY PROBLEMS WITH ITS INTERNET CONNECTIVITY. ANY SUCH PROBLEMS ARISING OUT OF THE FOREGOING IS OUTSIDE OF APTITO'S CONTROL; MERCHANT WAIVES ANY CLAIMS IT MAY HAVE AGAINST APTITO DUE TO ITS INABILITY TO ACCESS DATA OR CONNECT TO THE INTERNET WHICH IS BASED ON OR ARISING OUT OF ONE OF THE FOREGOING REASONS.

4.5 Exclusive Credit Card Processing: Merchant agrees that during the term of this Agreement, and any renewal term that it shall enter into a Merchant Transaction Processing Agreement and exclusively process credit/debit/gift card transactions with Aptito. Failure to do so shall result in Aptito's right to immediately terminate this Agreement as set forth in Section 9, and forfeiture of the Equipment without notice or opportunity to cure. Such termination of this Agreement shall not relieve Merchant of its obligation to pay Fees that have accrued as of the termination date and shall result in an Early Termination Fee as set forth in Section 9.4.

4.6 Equipment Return. Merchant agrees that: (a) upon termination of the Agreement that it shall return all Equipment to Aptito within fifteen (15) days; (b) upon receiving replacement Equipment that it shall return any Equipment which it has requested being replaced to Aptito within fifteen (15) days of receipt of the substitute Equipment; and (c) to the extent permitted by applicable law, without demand or legal process, Aptito, its agents, affiliate, or assigns, may enter into the premises where the Equipment may be found and take possession of and remove the Equipment, without liability of such retaking. Any Equipment that is; in Aptito's sole discretion damaged above ordinary wear and tear, or is not returned within the timeframe specified in this Section will result in a charge to Merchant of the then current rate of the Equipment.

4.7 Indemnification of Aptito: Merchant shall indemnify Aptito and hold it harmless against all claims, liabilities, and costs, including reasonable attorneys' fees; (a) reasonably incurred in the defense of any claim brought against Aptito arising out of or related to the use of the Equipment or Software contained therein; or (b) reasonably incurred as a result of Merchant's breach of this Agreement. Merchant shall promptly notify Aptito in writing of any such claim and any such suit will not be settled without Aptito's consent, such consent not to be unreasonably withheld. Aptito shall cooperate in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Aptito.

5. Charges and Payments

5.1 Debit of Service Charges: Merchant shall be charged Total Monthly Service Fee as set forth herein for Equipment upon the first business day of the month beginning on the Commencement Date. Aptito shall continue debit Merchant for service charges on the first of every subsequent month during the Initial Term and any renewal term of this Agreement. Merchant expressly permits Aptito to re-debit merchant's bank account should its attempt to collect fees reject for any reason. Service charges do not include and shall be increased to include any applicable local, state, or federal taxes or charges, however designated, levied, or assessed.

5.2 Billing, Payments and Credit Authorization: (a) Merchant grants Aptito, its affiliates, subsidiaries, successors, and assigns, Automated Clearing House ("ACH") Authorization to credit and debit its demand deposit account and permission to make a credit inquiry in order to obtain a consumer credit report. (b) Aptito may share and Merchant expressly permits such information to be provided to third parties so long as such third party is under no less of an obligation to maintain the security of this information as Aptito. (c) Should any ACH debit made upon Merchant's demand deposit account for payment due under this Agreement reject for any reason including but not limited to Merchant not having sufficient funds in its account, Merchant shall be charged for a Thirty Five (\$35) Dollar Insufficient Fund ("NSF") Fee. This authorization shall survive the term of this Agreement for as long as Merchant owes any fee as set forth herein.

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

5.4 Taxes: Merchant shall pay (or reimburse Aptito), in addition to the charges for the services specified herein and as a separate item, all taxes (exclusive of Aptito net income taxes), however designated, or amounts legally levied in lieu thereof, based on or measured by the charges set forth in this Agreement or on this Agreement, or on the services rendered hereunder, now or hereunder imposed under the authority of any federal, state or local taxing jurisdiction.

5.5 Shipping. All Equipment shall be shipped via UPS Ground Shipping ("Courier"). Merchant authorizes Aptito to debit the amount for shipping at the time the unit ships. Aptito shall have no liability for failure of Equipment to reach its destination in a timely manner once it has delivered the Equipment to Courier. Merchant is responsible for all shipping costs. Please note: Equipment will be shipped **after** completion of customization.

6. Limitation of Remedies and Liability

6.1 SCOPE OF DAMAGES. APTITO, ITS AFFILIATES, PARENTS, SUBSIDIARIES, SUCCESSORS, AND ASSIGNS SHALL NOT BE RESPONSIBLE TO THE MERCHANT OR ITS AFFILIATES, SUBSIDIARIES, SUCCESSORS, OR ASSIGNS, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, BUSINESS INTERRUPTION, OR OTHER INCIDENTAL, PUNITIVE OR ECONOMIC DAMAGES (INCLUDING THOSE ASSOCIATED WITH IMPROPER OR INADEQUATE TAXES CHARGED), WHETHER ARISING FROM MERCHANT'S USE (OR INABILITY TO USE) THE EQUIPMENT, SOFTWARE, SERVICES PROVIDED IN CONNECTION HERewith, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL THE MERCHANT BE ENTITLED TO RECOVER OR COLLECT ANY DAMAGES IN THE AGGREGATE IN EXCESS OF AN AMOUNT EQUAL TO THE FEES PAID UNDER THIS AGREEMENT DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE MERCHANT'S FIRST CLAIM OF ALLEGED DAMAGES. NOTWITHSTANDING THE FOREGOING, APTITO, ITS AFFILIATES, PARENTS, SUBSIDIARIES, SUCCESSORS, AND ASSIGNS, SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES INCURRED AS A RESULT OF DOWNTIME OF THE EQUIPMENT OR SOFTWARE.

6.2 DISCLAIMER OF WARRANTIES AND LIMITATION OF WARRANTIES. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, APTITO, ITS AFFILIATES, PARENTS, SUBSIDIARIES, SUCCESSORS, AND ASSIGNS, MAKE NO WARRANTIES, EXPRESS OR IMPLIED AS TO ANY APTITO SERVICE, RELATED PRODUCTS, EQUIPMENT, SOFTWARE OR DOCUMENTATION. THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY APTITO, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. APTITO DOES NOT GUARANTEE THAT THE EQUIPMENT OR SOFTWARE CONTAINED THEREIN WILL SATISFY MERCHANT'S REQUIREMENTS, OR THAT THE OPERATIONS OF SUCH WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS AGREEMENT, IF ANY, THE EQUIPMENT, SOFTWARE, AND SERVICES ARE PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT WILL BE WITH THE MERCHANT. APTITO SHALL NOT BE LIABLE FOR ANY COSTS OR FOR PERFORMING ANY SERVICES HEREUNDER ARISING IN CONNECTION WITH MERCHANT'S NEGLIGENCE, ABUSE, MISUSE, OR FAILURE TO PERFORM ROUTINE MAINTENANCE AND STANDARD OPERATING PROCEDURES.

7. Insurance. During the term of this Agreement, Merchant agrees to maintain, at Merchant's expense "Special Form" property insurance protecting the Equipment for its replacement value, naming Aptito as a loss payee on public liability insurance, in amounts acceptable to Aptito, naming Aptito as an additional insured. Merchant must provide Aptito satisfactory written evidence of the insurance within thirty (30) days of the commencement date of this Agreement or any subsequent written request. If Merchant does not do so, Aptito may obtain insurance from an Insurer of its choosing in such forms and amounts as Aptito deems reasonable to protect its interests.

Such insurance covers the Equipment and Aptito; it does not name the Merchant as the insured. Merchant agrees to pay Aptito periodic charges for insurance that include: a premium that may be higher than if the Merchant maintained its own insurance separately, a finance charge of up to 1.5% per month on any premium advances made by Aptito or its agents, affiliates or assigns, and billing and processing fees; each of which may generate a profit for Aptito and its agents, affiliates, and assigns. Unless Merchant provides satisfactory evidence of insurance by the due date set forth herein, Aptito shall pay such insurance by debiting Merchant's account under the withdrawal provision in this Agreement. Aptito shall discontinue billing insurance charges upon receipt of satisfactory evidence of insurance. Merchant agrees to arbitrate any dispute with Aptito or Aptito's agents, affiliates, or assigns regarding insurance or insurance charges under the rules of the American Arbitration Association in Miami, Florida; provided however, such agreement does not authorize class arbitration.

8. Term. This Agreement shall become effective as of the date accepted and signed by Aptito and shall continue for an initial term of five (5) years from the Commencement Date ("Initial Term"), unless earlier terminated pursuant to this section. This Agreement shall automatically renew for successive periods of four (4) years at the end of any term unless the terminating party provides sixty (60) days' prior written notice to the non-terminating party in accordance with the provisions of 10.6 hereof of its intent to terminate the Agreement prior to the end of the then current term.

9. Termination. This Agreement may be terminated in accordance with the following:

9.1 Merchant's Default on Payments: In the event Merchant defaults on any payment due under this Agreement, Aptito shall be entitled to either (a) immediately terminate this Agreement, or (b) withhold Merchant processing funds pursuant to the Merchant Agreement in the amount which it is in default for which Aptito may immediately apply to payment of any and all fees due.

9.2 Breach: In the event Merchant commits a breach of any of its obligations under Section 4, Aptito may terminate this Agreement or exercise its rights as set forth in this Section 9.

9.3 Survival of Merchant's Obligations: Customer's obligation to pay all charges which shall have accrued hereunder prior to termination of this Agreement shall survive termination, irrespective of the reason.

9.4 Early Termination Fee: If this Agreement is terminated either during the Initial Term or any renewal term for any reason set forth in this Section, Merchant agrees to pay an early termination fee equal to the total monthly service fee multiplied by the number of months remaining on the then-current term, in addition to all other amounts that the Merchant owes. The parties agree that the precise damages resulting from an early termination by Merchant are difficult to ascertain, and this early termination fee is a reasonable estimate of anticipated actual damages and not a penalty, but rather is reasonable in light of the financial harm caused by Merchant's early termination. Merchant expressly authorizes Aptito to debit this fee from its account, which may be done within thirty (30) days of termination.

9.5 Early Termination Option: Notwithstanding anything to the contrary contained in this Agreement, Merchant has the option to terminate this Agreement within 45 calendar days from the Commencement Date ("the Early Termination Period") without incurring the early termination fees detailed in Section 9.4 above. To be effective, (a) notice of the exercise of the Early Termination Option must be in writing and received by Aptito within the Early Termination Period; and (b) all Equipment supplied to Merchant must be returned in good working order to Aptito within the Early Termination Period, in accordance with Sections 4.6 and 5.5. In the event that Merchant exercises the Early Termination Option, Merchant will be charged a restocking fee equaling two Total Monthly Service Fees and reasonable Equipment repair or replacement costs, if any, in accordance with Section 3.2. Exercise of the Early Termination Option will terminate Aptito's obligations under this Agreement and the Merchant Transaction Processing Agreement. Merchant shall settle any and all merchant processing fees and commissions due to Aptito within 5 business days of the exercise of the Early Termination Option.

10. General Terms and Conditions

10.1 Assignment: Merchant shall not have the right to assign or otherwise transfer its right and obligations under this Agreement except with the written consent of Aptito. Aptito shall have the right to assign any or all of its interest, rights, and obligations in this Agreement without the need for consent from Merchant. Any prohibited assignment shall be null and void.

10.2 Ownership: During the Initial Term, the Equipment is, and will remain at all times, the exclusive property of Aptito, its affiliates, successors, or assigns. Merchant's use of the Equipment is expressly conditioned on the terms of this Agreement and does not confer any ownership rights of any kind in the Merchant. Merchant hereby authorizes Aptito, at Merchant's expense, to cause this Service Agreement or any statement or any other instrument in respect to this Agreement showing Aptito's interest in the Equipment, to be filed or recorded. Merchant shall at all times keep the Equipment free from legal process or encumbrance whatsoever and, shall indemnify Aptito from any loss caused thereby. Notwithstanding the foregoing, upon the completion of the five (5) year Initial Term, so long as the Agreement has not been terminated in accordance with Section 9, ownership in the Equipment (excluding the Software) shall automatically transfer to the Merchant.

10.3 Confidentiality: Merchant shall not copy, translate, disassemble, or decompile, nor create or attempt to create, by reverse engineering or otherwise, the source code from the object code any Equipment, or any Software or products used in conjunction with the Equipment. Merchant is not permitted to make derivative works of any software, hardware, or otherwise used in conjunction with or part of the Equipment, and ownership of any unauthorized derivative works shall vest in Aptito. Merchant shall not, without Aptito's prior written consent, disclose any of the Proprietary Information of Aptito, including but not limited to the Equipment or Software, to any person, except as is necessary to enable such party to exercise its rights hereunder. Merchant agrees to solely use the Proprietary Information of Aptito as is necessary in its performance under this Agreement and as otherwise necessary to enjoy the acceptable use of the Equipment. Merchant agrees that any party that has access to this information will be subject to the confidentiality terms as set forth in this section.

10.4 Proprietary Interest: Merchant shall have no interest whatsoever, including copyright interest, franchise interests, license interest, patent rights, property rights or other interest in the Equipment or Software provided by Aptito. This Agreement is not construed as granting the Merchant any intellectual rights or intellectual license in any intellectual property, which Aptito may obtain in respect of the Equipment and Software. The Merchant will make no attempt to duplicate or otherwise ascertain the Proprietary Information, or otherwise attempt to reverse engineer any Aptito provided Equipment or Software.

10.5 Amendments: This Agreement may be amended by Aptito, its affiliates, or assigns, upon thirty (30) days written notice. Merchant's continued use of the Equipment shall be acceptance of such amended terms. Notwithstanding the foregoing, Aptito shall not raise the Monthly Service Fee during the Initial Term except for the collection of taxes as set forth in Section 5.4 or as a result of a change in any laws, regulations, Association rules, or other prescribed directives which impact the costs associated with this Agreement.

10.6 Notices: Notices permitted or required to be given hereunder shall be deemed sufficient if given by courier service, registered or certified air mail, postage prepaid, return receipt requested, addressed to the respective addresses or the parties as first above written or at such other addresses as the respective parties may designate by like notice from time to time. Notices so given shall be effective as of the date stamped on the receipt.

10.7 Severability: In the event that any of the terms of this Agreement are in conflict with any rule of laws, regulations, provisions or otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed amended so that such term of provision complies with such applicable law or regulation, but such invalidity, unenforceability, or revision shall not invalidate any of the other terms of this Agreement and this Agreement shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Agreement.

10.8 Governing Law and Forum: Agreement to Arbitrate. (a) Aptito and Merchant agree to arbitrate all disputes and claims between each other or its affiliates, subsidiaries, successors, or assigns. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to: (i) claims arising out of or relating to any aspect of the relationship between the parties, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; (ii) claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising); (iii) claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and (iv) claims that may arise after the termination of this Agreement. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Office of the Comptroller of the Currency. Such agencies can, if the law allows, seek relief against us on your behalf. **The parties**

agree that, by entering into this Agreement, each party is waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of this Agreement. **(b)** A party who intends to seek arbitration must first send to the other, by certified mail or courier service a written Notice of Dispute ("Notice"). The Notice to Aptito should be addressed to: General Counsel, Aptito, LLC, 3363 NE 163rd Street, Suite 705, North Miami Beach, FL 33160 ("Notice Address"). The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought ("Demand"). If the parties do not reach an agreement to resolve the claim within 30 days after the Notice is received, either party may commence an arbitration proceeding. **(c)** The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. The parties specifically consent to and accept the jurisdiction of the courts of the State of Florida and the United States District Court located in Miami, Florida for the purposes of such enforcement. Unless the parties agree otherwise, any arbitration hearings will take place in Miami, Florida. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the alternative payment and the attorney premium at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits. **(d)** The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **THE PARTIES, AND ITS AFFILIATES AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both parties agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void. **(e)** Notwithstanding any provision in this Agreement to the contrary, if Aptito makes any future change to this arbitration provision (other than a change to the Notice Address) during the term of this Service Agreement, Merchant may reject any such change by sending Aptito written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any future change, Merchant is agreeing that it will arbitrate any dispute between us in accordance with the language of this provision. **(f)** Merchant and Aptito acknowledge and agree that this Agreement and Guaranty contained herein, was, and shall be deemed to have been, made and delivered in Miami Dade County, Florida. The laws of the State of Florida, except as such law is preempted by or inconsistent with applicable federal law shall govern all matters (whether in contract, statute, tort or however characterized) arising out of or relating to this Agreement and the Guaranty contained herein, including without limitation, the validity, interpretation, construction, performance and enforcement of the Agreement and Guaranty contained herein, the courts of the State of Florida shall have and be vested with personal jurisdiction over the parties. If Merchant brings legal action against Aptito for any reason, Merchant shall commence the action within one (1) year of the date the error or the incident giving rise to such action occurred.

10.9 Conflicting Terms: The terms and conditions of this Agreement shall prevail over any additional, contrary terms, or oral representations, which may be contained in any instructions or other communications submitted to Aptito by Merchant with respect to this Agreement.

10.10 Independent Contractor: Nothing in this Agreement or in the performance thereof shall be construed to create any partnership, joint venture, or relationship of principal and agent or employer and employee between Aptito and Merchant or any of their respective affiliates or subsidiaries. Aptito and Merchant are and shall remain independent contractors. As such, neither Merchant nor any employees, agents or affiliated persons of Merchant shall be entitled under any circumstances to maintain any action against Aptito for any physical injury incurred by Merchant or any employees, agents or affiliated persons of Merchant (including, but not limited to, the filing of claims under the workers' compensation laws of any state.) Furthermore, Merchant acknowledges that Merchant shall be solely responsible for the purchase and maintenance of employment and/or workers compensation insurance coverage related to its employees, agents or contractors, and that Aptito shall have no responsibility for any such coverage.

10.11 Force Majeure: Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

10.12 No Waiver of Rights. Unless expressly provided herein, no failure or delay on the part of any party in exercising any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right.

10.13 Entire Agreement: APTITO'S REPRESENTATIVES MAY HAVE MADE ORAL STATEMENTS REGARDING THE EQUIPMENT, SOFTWARE OR SERVICES SET FORTH HEREIN. NONE OF THE ORAL STATEMENTS CONSTITUTE WARRANTIES, MERCHANT SHALL NOT RELY ON ANY OF THEM, AND THEY ARE NOT PART OF THE AGREEMENT. THIS AGREEMENT, INCLUDING THE EXHIBITS ATTACHED HERETO AND INCORPORATED AS AN INTEGRAL PART OF THIS AGREEMENT, CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES ALL PREVIOUS PROPOSALS, ORAL OR WRITTEN, AND ALL NEGOTIATIONS, CONVERSATIONS OR DISCUSSIONS HERETOFORE HAD BETWEEN THE PARTIES RELATED TO THIS AGREEMENT. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY ANY REPRESENTATIONS OR STATEMENTS, ORAL OR WRITTEN, NOT EXPRESSLY CONTAINED HEREIN.