

**BENSERON INFORMATION TECHNOLOGIES, INC. (hereafter  
“BENSERON INFORMATION TECHNOLOGIES, INC. ®”)**

**Sales Terms and Conditions**

**1** - Title to the Equipment shall vest in Customer and payment shall be due prior to shipment of the Equipment to Customer.

**2** - It shall be Customer's responsibility to maintain environmental conditions meeting specifications of the manufacturer of the Equipment.

**3** - Customer shall pay BENSERON INFORMATION TECHNOLOGIES, INC. ® in addition, any tax (exclusive of taxes based on net income) on this Agreement, on or measured by the prices and/or other charges, or the Equipment, program products and services furnished, for their use, however designated, levied or based, whenever BENSERON INFORMATION TECHNOLOGIES, INC. ® must itself pay and/or collect such tax from Customer according to the applicable statutes, or ordinances as interpreted by the departmental authorities of the taxing unit. BENSERON INFORMATION TECHNOLOGIES, INC. ® shall invoice Customer for all taxes unless Customer provides BENSERON INFORMATION TECHNOLOGIES, INC. ® with a valid resale exemption certificate or equivalent, if applicable, from the state where the Equipment is to be delivered. It shall be Customer's sole obligation after payment of BENSERON INFORMATION TECHNOLOGIES, INC. ® to challenge the applicability of any tax. Any personal property taxes that are assessable on the Equipment after shipment shall be borne by Customer. Customer agrees to indemnify and hold harmless BENSERON INFORMATION TECHNOLOGIES, INC. ® from any applicable sales or use taxes, which the taxing authority of any state requires BENSERON INFORMATION TECHNOLOGIES, INC. ® to pay on Equipment ordered hereunder. Customer shall pay all delivery and handling charges. In addition, if delivery to the installation site cannot be made with equipment normally employed by the Equipment carrier, any extra costs incurred thereby, including extra insurance, rigging or handling shall be paid by Customer within ten (10) days after receipt of invoice of said special charges.

**4** - BENSERON INFORMATION TECHNOLOGIES, INC. ® warrants that it has title to the Equipment and the right to convey title to Customer. BENSERON INFORMATION TECHNOLOGIES, INC. ®, AS AN AUTHORIZED DISTRIBUTOR FOR THE MANUFACTURER OF THE EQUIPMENT DESCRIBED HEREIN, MAKES NO WARRANTY OF ITS OWN OF THE EQUIPMENT BUT HEREBY TRANSFERS AND ASSIGNS TO CUSTOMER ALL WARRANTIES OF THE MANUFACTURER, WHICH BENSERON INFORMATION TECHNOLOGIES, INC. ® HAS THE POWER TO ASSIGN

AND TRANSFER. No representation or other affirmation of fact, including but not limited to statements regarding capacity, suitability for use or performance of the Equipment shall be or deemed to be a warranty or representation by BENSERON INFORMATION TECHNOLOGIES, INC. ® for any purpose nor give rise to any liability or obligation of BENSERON INFORMATION TECHNOLOGIES, INC. ® whatsoever. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED. BENSERON INFORMATION TECHNOLOGIES, INC. ® EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**5** - The BENSERON INFORMATION TECHNOLOGIES, INC. ® does not provide any warranty for equipment sold. Only manufactures' warranty applies. BENSERON INFORMATION TECHNOLOGIES, INC. ®'s warranty does not include the assumption by BENSERON INFORMATION TECHNOLOGIES, INC. ® of liability: (a) for any loss or damage caused by delays in the rendering of Equipment maintenance for any reason; or, (b) for labor, expense or material necessary to repair damage to the Equipment caused by (1) accident; (2) negligence, or abuse of Customer including failure to maintain environmental conditions; (3) acts of third person including, but not limited to, repair, maintenance or other corrective work provided by parties other than BENSERON INFORMATION TECHNOLOGIES, INC. ® or BENSERON INFORMATION TECHNOLOGIES, INC. ®'s authorized agent or representative; (4) causes external to the Equipment, such as electrical power fluctuations and failures; or (5) floods, windstorms or other acts of God.

**6** - Customer assumes full responsibility for the overall effectiveness and efficiency of the operating environment in which the Equipment and BENSERON INFORMATION TECHNOLOGIES, INC. ®'s Software are to function. After implementation of the Equipment, Customer shall check the accuracy of the Customer information. BENSERON INFORMATION TECHNOLOGIES, INC. ® shall promptly update any discrepancies Customer provides to BENSERON INFORMATION TECHNOLOGIES, INC. ® in writing. Customer agrees that it is responsible for the accuracy of the information provided to BENSERON INFORMATION TECHNOLOGIES, INC. ® and shall indemnify and hold BENSERON INFORMATION TECHNOLOGIES, INC. ® harmless from any losses incurred for such inaccurate information. Customer assumes full responsibility for the backup data, unless Customer has paid for and BENSERON INFORMATION TECHNOLOGIES, INC. ® has agreed in writing to provide backup and cloud services for Customer.

**7** - By signing below, I hereby waive any rights I may have against BENSERON INFORMATION TECHNOLOGIES, INC. ®, its officers, agents and employees for any and all liability for unsettled credit card batches, lost transactions, lost tip adjustments and any other issues related to credit card transactions which may be caused by the use of third party credit card processing software.

**8** - THE PARTIES EXPRESSLY AGREE THAT IN NO EVENT SHALL BENSERON INFORMATION TECHNOLOGIES, INC. ® BE LIABLE FOR LOSS OF PROFITS, INDIRECT, SPECIAL AND CONSEQUENTIAL OR OTHER SIMILAR DAMAGES ARISING OUT OF BREACH OF THIS AGREEMENT OR OBLIGATIONS UNDER THE AGREEMENT. BENSERON INFORMATION TECHNOLOGIES, INC. ® SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN SHIPMENT, INSTALLATION OR FURNISHING OF EQUIPMENT OR SERVICES UNDER THIS AGREEMENT. As to software, no action arising out of any claimed breach of this Agreement may be brought by either party more than one (1) year after the cause of the action has accrued; as to hardware refer to manufacturer as BENSERON INFORMATION TECHNOLOGIES, INC. ® does not provide any warranty.

**9** - If Customer fails to perform any of its obligations under this Agreement within the time they are required, Customer agrees, at BENSERON INFORMATION TECHNOLOGIES, INC. ®'s option, to return all items that are subject to this Agreement to BENSERON INFORMATION TECHNOLOGIES, INC. ®, or make these items available for BENSERON INFORMATION TECHNOLOGIES, INC. ® to remove, after which BENSERON INFORMATION TECHNOLOGIES, INC. ® will continue to exercise its rights and remedies under applicable law.

**10** - BENSERON INFORMATION TECHNOLOGIES, INC. ® will give a full refund, less a 30% restocking fee, for returned Equipment, if returned within thirty (30) calendar days of the purchase date. No refunds will be given after thirty (30) calendar days. In reference to any Apple product not limited to the iPad, you have (14) calendar days from the date you received it. All amounts paid by Customer under this Agreement are non-refundable without BENSERON INFORMATION TECHNOLOGIES, INC. ®'s prior written consent. There shall be no refunds on software licenses, shipping, menu programming and training fees. If Customer owes any amounts to BENSERON INFORMATION TECHNOLOGIES, INC. ®, Customer hereby authorizes BENSERON INFORMATION TECHNOLOGIES, INC. ® to ACH the funds directly from Customer's checking account or to charge Customer's credit card on file with BENSERON INFORMATION TECHNOLOGIES, INC. ®.

**11** - In the event that Customer makes use of any software programming in connection with the Equipment supplied hereunder which is not provided by BENSERON

INFORMATION TECHNOLOGIES, INC. ®, Customer acknowledges that BENSERON INFORMATION TECHNOLOGIES, INC. ® has made no representation or warranties with respect to any non-BENSERON INFORMATION TECHNOLOGIES, INC. ® software, its performance on the Equipment or the service to be provided with respect to such non-BENSERON INFORMATION TECHNOLOGIES, INC. ® soft-ware, and BENSERON INFORMATION TECHNOLOGIES, INC. ® shall incur no liability to Customer arising out of the use of such non-BENSERON INFORMATION TECHNOLOGIES, INC. ® software or the furnishing of such services. Customer acknowledges that no BENSERON INFORMATION TECHNOLOGIES, INC. ® software is being furnished to Customer by BENSERON INFORMATION TECHNOLOGIES, INC. ® except pursuant to separate written Point of Sale License Agreement between Customer and BENSERON INFORMATION TECHNOLOGIES, INC. ®.

**12** - BENSERON INFORMATION TECHNOLOGIES, INC. ® Equipment comes with limited or no anti-virus protection. It shall be the Customer's responsibility to provide anti-virus protection to the Equipment. BENSERON INFORMATION TECHNOLOGIES, INC. ® shall not be responsible for any damage done to the Equipment or any of the Customer's property by computer viruses, malware, Trojans or any similar malicious computer program (collectively "Malicious Computer Programs") regardless of whether such Malicious Computer Programs are caused by software provided by BENSERON INFORMATION TECHNOLOGIES, INC. ® to the Customer, including but not limited to free software as part of a pilot or demo. As stated in Section 8 above, BENSERON INFORMATION TECHNOLOGIES, INC. ® shall not be liable for loss of profits, indirect, special and consequential or similar damages for any damage done to the Equipment or any of the Customer's property by Malicious Computer Programs. Should Customer's Equipment become infected with Malicious Computer Programs, BENSERON INFORMATION TECHNOLOGIES, INC. ® will charge its hourly service rates unless the client is otherwise covered by BENSERON INFORMATION TECHNOLOGIES, INC. ®'s service programs.

**13** - During the term of this Agreement and thereafter, Customer agrees to take no action, except for an action to enforce Customer's rights in an arbitration proceeding or court of law, which is intended, or would reasonably be expected, to harm BENSERON INFORMATION TECHNOLOGIES, INC. ® or its reputation or which would reasonably be expected to lead to unwanted or unfavorable publicity to BENSERON INFORMATION TECHNOLOGIES, INC. ®, including but not limited to the posting of disparaging comments or reviews concerning BENSERON INFORMATION TECHNOLOGIES, INC. ® on the Internet (all of which shall be known as Disparaging Comments). Disparaging Comments include any negative statement, whether written or oral, about BENSERON INFORMATION TECHNOLOGIES, INC. ®, its officers, directors or assigns.

In the event Customer makes any Disparaging Comments, Customer and BENSERON INFORMATION TECHNOLOGIES, INC. ® agree that the damages arising from such comments will be difficult if not impossible to determine. Therefore, in the event Customer makes Disparaging Comments, Customer shall pay to BENSERON INFORMATION TECHNOLOGIES, INC. ® \$3,500.00 for each utterance of the comment (i.e., on each webpage that a Disparaging Comment is posted) as Liquidated Damages and not as a penalty.

**14** - No supplement, modification or amendment of this Agreement shall be binding unless executed in writing, by all the parties hereto. No waiver of any of the provisions of the Agreement shall be deemed, or shall constitute, a waiver of any other provisions, nor shall any waiver be a continuing waiver.

**15** - This Agreement constitutes the entire agreement, understanding and representations, express or implied, between the Customer and BENSERON INFORMATION TECHNOLOGIES, INC. ® with respect to the Equipment, and/or related services to be furnished. This Agreement supersedes all prior communications between the parties including all oral and written proposals.

**16** - This Agreement may be executed in one or more counterparts, but all of which together shall constitute one and the same instrument. Notwithstanding the foregoing, the counterpart of this Agreement held by BENSERON INFORMATION TECHNOLOGIES, INC. ® shall be considered the original and shall control in case of any variance between it and any other signed copy.

**17** - The laws of the State of Florida shall govern as to the interpretation, validity and effect of this Agreement. This Agreement is performable in Lee County, Florida.

**18** - The parties hereto, and each of them, acknowledge that they have had the opportunity to have been represented by independent counsel of their own choice throughout all negotiations which preceded the execution of this Agreement and the parties further agree that the terms of this Agreement shall be given a neutral interpretation and any ambiguity or uncertainty herein should not be construed against any party hereto.

**19** - In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions thereof, shall not be affected thereby.

**20** - This Agreement shall be binding on and shall inure to the benefit of the parties to it and their respective heirs, legal representatives, successors, and assigns.

**21** - If any legal action or any arbitration or other proceedings are brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

**22** - All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally upon the party to whom notice is to be given, or on the third day after mailing if mailed to the party to whom notice is being given by first class mail, registered or certified, postage pre-paid, and properly addressed to the parties herein at the addresses noted above.

**23** - Hold Harmless Terms. Customer agrees to hold harmless and unconditionally indemnify BENSERON INFORMATION TECHNOLOGIES, INC. ®, its employees, officers, agents, affiliates and subsidiaries, against and for all liability, cost, expenses, claims and damages which BENSERON INFORMATION TECHNOLOGIES, INC. ®, may at any time suffer or sustain or become liable for by reason of any accidents, damages, or injuries either to persons or property or both, of Customer, or any third parties, or to the property of BENSERON INFORMATION TECHNOLOGIES, INC. ®, or any persons or firms affiliated with BENSERON INFORMATION TECHNOLOGIES, INC. ®, in any manner, arising from or related to the use of any item sold hereunder, including but not limited to any negligent act or omission of BENSERON INFORMATION TECHNOLOGIES, INC. ®, its officers, agents, employees, affiliates, or subsidiaries, or any negligent acts or omissions of parties supplying items or equipment used by BENSERON INFORMATION TECHNOLOGIES, INC. ®, in manufacturing any item or product sold to Customer. In addition to the above, Customer agrees that BENSERON INFORMATION TECHNOLOGIES, INC. ®, its officers, employees, agents, affiliates and subsidiaries, will not be liable under any indemnity theories, whether common law, statutory, contractual or otherwise, to Customer; instead, Customer agrees to indemnify and hold harmless BENSERON INFORMATION TECHNOLOGIES, INC. ® for all claims, liabilities, cost, expenses and damages asserted under all legal theories, including, without limitation, negligence, product defect and strict liability in tort.

**24** - Disputes. ANY CONTROVERSY OR CLAIM BETWEEN THE PARTIES HERETO, THEIR EMPLOYEES, AGENTS, SUCCESSORS OR ASSIGNS, REGARDLESS OF THE

NATURE OF THE THEORY OR THE CAUSE OF ACTION UNDER WHICH IT IS ASSERTED, INCLUDING ANY CLAIM OF MISREPRESENTATION, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE BREACH THEREOF, OR THE FURNISHING OF ANY EQUIPMENT OR SERVICES BY EITHER PARTY, SHALL BE SETTLED BY ARBITRATION.

A single arbitrator under the auspices of the then current Commercial Rules of American Arbitration Association shall conduct the arbitration proceeding. The arbitrator shall be chosen from a panel of persons knowledgeable in business information and data processing systems. The power and office of the arbitrator shall arise wholly and solely from this Agreement and said Rules.

THE ARBITRATION SHALL RESIDE EXCLUSIVELY IN LEE COUNTY, STATE OF FLORIDA, FORT MYERS, AND THE AWARD OF THE ARBITRATOR SO RENDERED SHALL BE FINAL AND BINDING, EXCEPT TO THE EXTENT THAT ANY ARBITRATION AWARD MAY BE MODIFIED OR VACATED PURSUANT TO FLORIDA LAW. THE AWARD SO RENDERED MAY BE CONFIRMED, MODIFIED OR VACATED ONLY IN A COURT OF APPROPRIATE JURISDICTION IN FORT MYERS, FLORIDA.

THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED AND ALL LEGAL RELATIONS CREATED HEREIN SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA.

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**Where BENSERON INFORMATION TECHNOLOGIES, INC. ® has extended Credit, the following terms shall apply:**

**1 - SECURITY AGREEMENT**

Customer hereby grants BENSERON INFORMATION TECHNOLOGIES, INC. ® a security interest under the Uniform Commercial Code in the property (collectively the "Collateral" and individually an "Item" or "Item of Collateral") described on BENSERON INFORMATION TECHNOLOGIES, INC. ®'s final Invoice ("Invoice") attached hereto and incorporated herein. Such security interest is granted to secure performance by Customer of its obligations hereunder and under any other present or future agreement with BENSERON INFORMATION TECHNOLOGIES, INC. ®. Customer shall ensure that such security interest is and shall remain a sole first lien security interest.

**2 - PAYMENTS**

Customer shall repay BENSERON INFORMATION TECHNOLOGIES, INC. ® the total amount shown on the Invoice together with interest in the number of periodic installments

shown on the Invoice. The initial installment payment shall be deemed due as of the date indicated on the Invoice, and subsequent installment payments shall be due on the same day of each month thereafter until paid, whether or not an invoice is rendered. Advance Payments, if any are shown on the Invoice, will be used for the first payment and any balance will be used for the last payment(s), provided that, if there is a default, any payments under this agreement may be applied to Customer's obligation to BENSERON INFORMATION TECHNOLOGIES, INC. ® in such order as BENSERON INFORMATION TECHNOLOGIES, INC. ® chooses. Additionally, Customer shall pay \$125 as a document processing fee on invoice.

### **3 - NO AGENCY**

CUSTOMER ACKNOWLEDGES THAT NO SUPPLIER OF ANY ITEM OR INTERMEDIARY NOR ANY AGENT OF EITHER THEREOF IS AN AGENT OF BENSERON INFORMATION TECHNOLOGIES, INC. ® AND FURTHER THAT NONE OF SUCH PARTIES IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THIS AGREEMENT. NO REPRESENTATION AS TO ANY MATTER BY ANY SUCH PARTY SHALL BIND BENSERON INFORMATION TECHNOLOGIES, INC. ® OR AFFECT CUSTOMER'S DUTY TO PAY THE INSTALLMENT PAYMENTS AND PERFORM ITS OTHER OBLIGATIONS HEREUNDER.

### **4 - NON-CANCELABLE AGREEMENT; REPAYMENT; NO OFFSET**

THIS AGREEMENT IS NON-CANCELABLE BY CUSTOMER FOR ANY REASON WHATSOEVER. CUSTOMER MAY REPAY THE INSTALLMENT PAYMENTS ONLY IN ACCORDANCE HEREWITH. ALL PAYMENTS HEREUNDER ARE TO BE MADE WITHOUT OFFSET.

### **5 - FINANCING**

THIS AGREEMENT IS SOLELY A FINANCING AGREEMENT. BENSERON INFORMATION TECHNOLOGIES, INC. ® HAS NOT BEEN INVOLVED IN THE SELECTION OR PURCHASE OF AND HAS MADE AND HEREBY MAKES NO AGREEMENT, REPRESENTATION OR WARRANTY AS TO ANY ITEM OF COLLATERAL.

### **6 - LOCATION; INSPECTION; USE**

Customer shall keep, or as to an Item which is movable, permanently garaged and not remove from the United States, as appropriate, each Item of Collateral in Customer's possession and control at the Collateral Location specified on the Invoice or at such other location to which such Item may have been moved with prior written consent of BENSERON INFORMATION TECHNOLOGIES, INC. ®. Upon request, BENSERON INFORMATION TECHNOLOGIES, INC. ® may inspect the Collateral during normal

business hours and enter the premises where the Collateral may be located for such purposes. Each Item shall be used solely for commercial or business purposes and operated in a careful and proper manner and in compliance with all applicable governmental requirements and all requirements of insurance policies carried hereunder and all manufacturers' instructions and warranty requirements.

#### **7 - ALTERATIONS; SECURITY INTEREST COVERAGE**

Without BENSERON INFORMATION TECHNOLOGIES, INC. ®'s prior written consent, Customer shall not make any alterations, additions or improvements to an Item of Collateral which detract from its economic value or functional utility. All additions and improvements made to an Item shall be deemed accessions thereto, and shall not be removed if removal would impair the Item's economic value or functional utility. BENSERON INFORMATION TECHNOLOGIES, INC. ®'s security interest shall cover all modifications, accessions, additions to and replacements and substitutions for the Collateral. Customer will not make any replacements or substitutions without BENSERON INFORMATION TECHNOLOGIES, INC. ®'s prior written consent.

#### **8 - MAINTENANCE**

Customer shall maintain the Collateral in good repair, condition and working order. Customer shall cause all repairs required to maintain the Collateral in such condition to be made promptly by qualified parties. Customer will cause each Item of Collateral for which a service contract is generally available to be covered by such a contract which provides coverages typical as to property of the type involved and is issued by a competent servicing entity.

#### **9 - LOSS AND DAMAGE; CASUALTY VALUE**

Customer will bear all risk of loss, theft, destruction or requisition of or damage to any Item. Customer shall give BENSERON INFORMATION TECHNOLOGIES, INC. ® prompt notice of a casualty occurrence and shall thereafter place the Item in good repair, condition and working order; provided however, that if such Item is determined by BENSERON INFORMATION TECHNOLOGIES, INC. ® to be lost, stolen, destroyed or damaged beyond repair or is requisitioned or suffers a constructive total loss under an insurance policy carried hereunder, Customer shall pay BENSERON INFORMATION TECHNOLOGIES, INC. ® the "Casualty Value" of such Item which shall equal (a) any amounts due at the time of such payment and (b) the present value of the unpaid balance of payments due for the remainder of the Term computed at a discount rate of six percent (6%) per annum.

#### **10 - TITLING**

If requested by BENSERON INFORMATION TECHNOLOGIES, INC. ®, Customer shall cause an Item of Collateral subject to title registration laws to be titled as directed by BENSERON INFORMATION TECHNOLOGIES, INC. ®. Customer shall advise BENSERON INFORMATION TECHNOLOGIES, INC. ® promptly as to any necessary retitling. Customer shall cause all documents of title to be furnished to BENSERON INFORMATION TECHNOLOGIES, INC. ® within sixty (60) days of the date on any titling done by Customer.

#### **11 - TAXES**

Unless otherwise directed in writing by BENSERON INFORMATION TECHNOLOGIES, INC. ®, Customer shall pay when due and make filings with respect to all taxes, fees, including registrations, fines, penalties, and other governmental assessments with respect to the Collateral and shall pay all other governmental assessments (including gross receipt taxes but exclusive of Federal and State taxes based on BENSERON INFORMATION TECHNOLOGIES, INC. ®'s net income) related to amounts due hereunder, the Collateral or otherwise related hereto.

#### **12 - LIMITED POWER OF ATTORNEY**

Customer hereby irrevocably appoints BENSERON INFORMATION TECHNOLOGIES, INC. ® as Customer's attorney-in-fact for the following limited purposes: (i) to sign and to file or record on Customer's behalf and in Customer's name any document BENSERON INFORMATION TECHNOLOGIES, INC. ® deems necessary to perfect or protect BENSERON INFORMATION TECHNOLOGIES, INC. ®'s interest in the Collateral or pursuant to the UCC, and (ii) to sign, endorse and/or negotiate, on Customer's behalf and in Customer's name, for BENSERON INFORMATION TECHNOLOGIES, INC. ®'s benefit, any instrument representing proceeds from any policy of insurance covering the Collateral.

#### **13 - INSURANCE**

Customer shall maintain and provide BENSERON INFORMATION TECHNOLOGIES, INC. ® evidence satisfactory to BENSERON INFORMATION TECHNOLOGIES, INC. ® of the maintenance of all risk insurance against loss of or damage to the Collateral for not less than the full replacement value thereof naming BENSERON INFORMATION TECHNOLOGIES, INC. ® as Loss Payee. Such insurance shall be in an amount and form and with companies approved by BENSERON INFORMATION TECHNOLOGIES, INC. ®, shall provide at least thirty (30) days advance written notice to BENSERON INFORMATION TECHNOLOGIES, INC. ® of material change or cancellation, shall provide full breach of warranty protection, if appropriate, and shall provide that the coverage is "primary". In the event of an assignment of this agreement of which Customer receives notice, Customer shall cause such insurance to provide the same protection to the assignee as its interests may appear. The proceeds of such insurance, at the option

of the BENSERON INFORMATION TECHNOLOGIES, INC. ®, shall be applied toward (a) the repair or replacement of the appropriate Item or Items of Collateral, (b) payment of the Casualty Value thereof, or (c) payment of any other accrued obligations of Customer hereunder. Any excess of such proceeds remaining shall belong to Customer. Customer shall maintain public liability and property damage coverage in such amounts and in such forms as BENSERON INFORMATION TECHNOLOGIES, INC. ® shall reasonably require. If Customer does not provide the insurance described in this section, BENSERON INFORMATION TECHNOLOGIES, INC. ® may, but will not be required to, buy such insurance and add the cost, including any customary charges or fees associated with the placement, maintenance or service of such insurance, to the installment payment amount due from Customer.

#### **14 - BENSERON INFORMATION TECHNOLOGIES, INC. ®'S PAYMENT**

If Customer fails to perform any of its obligations hereunder, BENSERON INFORMATION TECHNOLOGIES, INC. ® may perform such obligation, and Customer shall (a) reimburse BENSERON INFORMATION TECHNOLOGIES, INC. ® the cost of such performance and related expenses and (b) pay BENSERON INFORMATION TECHNOLOGIES, INC. ® the late charge contemplated in paragraph 21 on the cost and expenses of such performance.

#### **15 - INDEMNITY**

Customer shall indemnify, defend and hold harmless BENSERON INFORMATION TECHNOLOGIES, INC. ® against any claim, action, liability or expense, including attorney's fees and court costs, incurred by BENSERON INFORMATION TECHNOLOGIES, INC. ® related to this agreement. While it is anticipated that BENSERON INFORMATION TECHNOLOGIES, INC. ® shall have no liability for torts related to the Collateral, this indemnity covers tort claims including any strict liability claim, any claim under another theory related to latent or other defects and any patent, trademark or service mark infringement claim. This indemnity shall survive termination of this Agreement.

#### **16 - DEFAULT**

Any of the following constitutes an event of default hereunder: (a) Customer's failure to pay any amount hereunder, within ten (10) business days of when due; (b) Customer's default in performing any other obligation hereunder or under any other agreement between Customer and BENSERON INFORMATION TECHNOLOGIES, INC. ®; (c) Customer changes its name, state of incorporation, chief executive office and/or place of residence without providing BENSERON INFORMATION TECHNOLOGIES, INC. ® with

30 days written notice of such change; (d) death or judicial declaration of incompetency of Customer, if an individual or partner; (e) the filing by or against Customer of a petition under the Bankruptcy Code or under any insolvency law or law providing for the relief of Customers, including without limitation, a petition for reorganization, agreement or extension; (f) the making of an assignment of a substantial portion of its assets by Customer for the benefit of BENSERON INFORMATION TECHNOLOGIES, INC. ®, appointment of a receiver or trustee for Customer or for any of Customer's assets, institution by or against Customer of any other type of insolvency proceeding or other proceeding contemplating settlement of claims against or winding up of the affairs of Customer, Customer's cessation of active business affairs or the making by Customer of a transfer of a material portion of Customer's assets or inventory not in the ordinary course of business; (g) the occurrence of an event described in (d), (e) or (f) as to a guarantor or other surety of Customer's obligations hereunder; (h) any misrepresentation of a material fact in connection herewith by or on behalf of Customer; (i) Customer's default under a lease or agreement providing financial accommodations with a third party or (j) BENSERON INFORMATION TECHNOLOGIES, INC. ® shall in good faith deem itself insecure as a result of a material adverse change in Customer's financial condition or otherwise.

## **17 - REMEDIES**

Upon the occurrence of an event of default BENSERON INFORMATION TECHNOLOGIES, INC. ® shall have the rights, options, duties and remedies of a secured party, and Customer shall have the rights and duties of a Customer, under the Uniform Commercial Code (regardless of whether such Code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted). Without limiting the generality of the foregoing, BENSERON INFORMATION TECHNOLOGIES, INC. ® shall have the right to (a) at BENSERON INFORMATION TECHNOLOGIES, INC. ®'s option, declare immediately due and payable the entire amount of all of Customer's obligations hereunder, without notice or demand to Customer and without setoff; (b) take possession of and, if deemed appropriate, render unusable any or all Items of Collateral, without demand or notice, wherever located, without any process of law and without liability for any damages occasioned by such taking of possession including damages to contents; (c) require Customer to assemble any or all Items of Collateral at a location in reasonable proximity to their designated location hereunder; (d) upon notice to Customer required by law, sell or otherwise dispose of any Items of Collateral, whether or not in BENSERON INFORMATION TECHNOLOGIES, INC. ®'s possession, in a commercially reasonable manner at public or private sale at any place designated in such notice and apply the net proceeds of such sale after deducting all costs of such sale, including, but not limited to, costs of transportation, repossession, storage, refurbishing, advertising and brokers fees,

to the obligations of Customer hereunder with Customer remaining liable for any deficiency and with any excess being returned to Customer or (e) utilize any other remedy available under the Uniform Commercial Code or otherwise to BENSERON INFORMATION TECHNOLOGIES, INC. ®. All remedies are cumulative. Any sale may be adjourned by announcement at the time and place appointed for such sale without further published notice, and BENSERON INFORMATION TECHNOLOGIES, INC. ® may if permitted by law bid and become the purchaser at any such sale.

## **18 - LITIGATION EXPENSES**

Customer shall pay BENSERON INFORMATION TECHNOLOGIES, INC. ® its costs and expenses, including repossession and attorney's fees and court costs, incurred by BENSERON INFORMATION TECHNOLOGIES, INC. ® in enforcing this agreement. This obligation includes the payment of such amounts whether an action is filed and whether an action which is filed is dismissed.

## **19 - ASSIGNMENT**

Without the prior written consent of BENSERON INFORMATION TECHNOLOGIES, INC. ®, Customer shall not sell, lease or create or allow any lien other than BENSERON INFORMATION TECHNOLOGIES, INC. ®'s security interest against an Item of Collateral or assign any of Customer's obligations hereunder. Customer's obligations are not assignable by operation of law. Consent to any of the foregoing applies only in the given instance. BENSERON INFORMATION TECHNOLOGIES, INC. ® may assign, pledge or otherwise transfer any of its rights hereunder without notice to Customer. If Customer is given notice of any such assignment, Customer shall acknowledge receipt thereof in writing and shall thereafter pay any amounts due hereunder as directed in the notice. The rights of an assignee to amounts due hereunder shall be free of any claim or defense Customer may have against BENSERON INFORMATION TECHNOLOGIES, INC. ®, and Customer agrees not to assert against an assignee any claim or defense which Customer may have against BENSERON INFORMATION TECHNOLOGIES, INC. ®. Subject to the foregoing, this agreement inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties.

## **20 - MARKINGS; PERSONAL PROPERTY**

Customer shall mark the Collateral or its location as requested by BENSERON INFORMATION TECHNOLOGIES, INC. ® to indicate BENSERON INFORMATION TECHNOLOGIES, INC. ®'s security interest. Customer will provide BENSERON INFORMATION TECHNOLOGIES, INC. ® any real property waivers requested by BENSERON INFORMATION TECHNOLOGIES, INC. ® as to the real property where an Item of Collateral is or is to be located.

## **21 - LATE PAYMENT**

In the event a payment is not made within 10 days when due hereunder the Customer promises to (a) pay a late charge to BENSERON INFORMATION TECHNOLOGIES, INC. ® or its assigns not later than one month thereafter, of up to 10% of the payment, or \$25.00, whichever is greater and (b) pay BENSERON INFORMATION TECHNOLOGIES, INC. ® amounts paid to others in connection with collection of the amount. The late charge and/or the interest payments set forth in this contract shall apply only when permitted by law, and, if not permitted by law, the late charge and/or interest payments shall be calculated at the maximum rate permissible by law.

## **22 - COMPLIANCE WITH LAW**

Customer and BENSERON INFORMATION TECHNOLOGIES, INC. ® intend to comply with all applicable laws. If it is determined that payments under this Equipment Financing Agreement result in an interest payment higher than that allowed by applicable law, then any excess interest collected will be applied to the repayment of principal and interest will be charged at the rate allowed by law.

## **23 - ADDITIONAL DOCUMENTS**

Customer shall provide to BENSERON INFORMATION TECHNOLOGIES, INC. ® such financing statements and similar documents as BENSERON INFORMATION TECHNOLOGIES, INC. ® shall request. Customer authorizes BENSERON INFORMATION TECHNOLOGIES, INC. ® where permitted by law to make filings of such documents without Customer's signature. Customer further shall furnish BENSERON INFORMATION TECHNOLOGIES, INC. ® (a) a fiscal year-end financial statement including balance sheet and profit and loss statement within one hundred twenty (120) days of the close of each fiscal year and (b) such other information and documents not specifically mentioned herein relative to this agreement as BENSERON INFORMATION TECHNOLOGIES, INC. ® may request. Customer shall reimburse BENSERON INFORMATION TECHNOLOGIES, INC. ® for all search and filing fees incurred by BENSERON INFORMATION TECHNOLOGIES, INC. ® related hereto.

## **24 - CROSS COLLATERAL/CROSS DEFAULT**

All Collateral shall secure the payment and performance of all of Customer's liabilities and obligations to BENSERON INFORMATION TECHNOLOGIES, INC. ® hereunder, under any other agreement between Customer and BENSERON INFORMATION TECHNOLOGIES, INC. ®, and under any of the loan documents relating hereto, including but not limited to all Equipment Finance Agreements, Lease Agreements, Interim Funding Agreements and all other documents (referred to herein collectively as the "Documents").

BENSERON INFORMATION TECHNOLOGIES, INC. ®'s security interest in the Collateral shall not be terminated until and unless all of Customer's obligations to BENSERON INFORMATION TECHNOLOGIES, INC. ® under any of the Documents are fully paid and performed. The occurrence of an event of default under any other of the Documents shall be deemed to be an Event of Default hereunder and an Event of Default hereunder shall be deemed to be an event of default under the Documents.

## **25 - NOTICES**

Notices shall be in writing and sufficient if mailed to the party involved, United States mail first class postage prepaid, at the Party's address set forth above or at such other address as either party may provide in writing. Notice so given shall be effective when mailed. Customer shall promptly notify BENSERON INFORMATION TECHNOLOGIES, INC. ® of any change in Customer's address.

## **26 - CHOICE OF LAW; WAIVER OF JURY TRIAL**

This agreement shall be governed by the law of the state of BENSERON INFORMATION TECHNOLOGIES, INC. ®'s principal place of business listed above. Customer consents to jurisdiction for any action related to this agreement in any state or federal court located in the state of the principal place of business of BENSERON INFORMATION TECHNOLOGIES, INC. ® or of any subsequent holder of this agreement. Jurisdiction shall also be proper in any court in another jurisdiction selected by BENSERON INFORMATION TECHNOLOGIES, INC. ® or any subsequent holder of this agreement, which has jurisdiction over the parties. BENSERON INFORMATION TECHNOLOGIES, INC. ® AND CUSTOMER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION INVOLVING THIS EQUIPMENT FINANCING AGREEMENT.

## **27 - GENERAL**

This agreement constitutes the entire agreement of the parties as to the subject matter and shall not be amended, altered or changed except by a written agreement signed by the parties, except BENSERON INFORMATION TECHNOLOGIES, INC. ® may (1) change the Collateral Description to include or update the identification of the Collateral or (2) change the Collateral Location. Any waiver by BENSERON INFORMATION TECHNOLOGIES, INC. ® must be in writing, and forbearance shall not constitute a waiver. Whenever the context of this agreement requires, the neuter includes the masculine or feminine and the singular includes the plural. If there is more than one Customer named in this agreement, the liability of each shall be joint and several. The titles to the paragraphs of this agreement are solely for the convenience of the parties and are not an aid in the interpretation. Any provision declared invalid shall be deemed severable from the remaining provisions which shall remain in full force and effect. Time

is of the essence of this agreement. The obligations of Customer shall survive the release of the security interest in the Collateral.

## **28 - CUSTOMER'S WARRANTIES**

CUSTOMER CERTIFIES AND WARRANTS: (a) THE FINANCIAL AND OTHER INFORMATION WHICH CUSTOMER HAS SUBMITTED, OR WILL SUBMIT, TO BENSERON INFORMATION TECHNOLOGIES, INC. ® IN CONNECTION WITH THIS AGREEMENT IS, OR SHALL BE AT TIME OF SUBMISSION, TRUE AND COMPLETE; (b) THE CUSTOMER'S EXACT LEGAL NAME, STATE OF INCORPORATION, LOCATION OF ITS CHIEF EXECUTIVE OFFICE AND/OR ITS PLACE OF RESIDENCE AS APPLICABLE, HAVE BEEN CORRECTLY INDEMNIFIED TO BENSERON INFORMATION TECHNOLOGIES, INC. ®; (c) THIS AGREEMENT HAS BEEN DULY AUTHORIZED BY CUSTOMER AND UPON EXECUTION BY CUSTOMER SHALL CONSTITUTE THE LEGAL, VALID AND BINDING OBLIGATION, CONTRACT AND AGREEMENT OF CUSTOMER ENFORCEABLE AGAINST CUSTOMER IN ACCORDANCE WITH ITS TERMS; AND (d) EACH SHOWING PROVIDED BY CUSTOMER IN CONNECTION HEREWITH MAY BE FULLY RELIED UPON BY BENSERON INFORMATION TECHNOLOGIES, INC. ® NOTWITHSTANDING ANY TECHNICAL DEFICIENCY IN ATTESTATION OR OTHERWISE. THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF CUSTOMER WARRANTS THAT PERSON'S DUE AUTHORITY TO DO SO. CUSTOMER FURTHER WARRANTS THAT EACH ITEM OF COLLATERAL SHALL AT THE TIME BENSERON INFORMATION TECHNOLOGIES, INC. ® FUNDS THE TOTAL ADVANCE BE OWNED BY CUSTOMER FREE AND CLEAR OF LIENS AND ENCUMBRANCES AND BE IN GOOD CONDITION AND WORKING ORDER.

## **29 - SECURITY INTEREST**

TO SECURE CUSTOMER'S PAYMENT AND PERFORMANCE OBLIGATION TO BENSERON INFORMATION TECHNOLOGIES, INC. ®, CUSTOMER GRANTS BENSERON INFORMATION TECHNOLOGIES, INC. ® A SECURITY INTEREST IN (a) ALL ACCOUNTS, CHATTEL PAPER, DOCUMENTS, EQUIPMENT, GENERAL INTANGIBLES, AND INVENTORY, NOT LIMITED TO THE EQUIPMENT LEASED OR FINANCED, AS THOSE TERMS ARE DEFINED IN ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE (the "UCC"), NOW OR HEREAFTER OWNED OR ACQUIRED BY CUSTOMER; AND (b) ALL PROCEEDS, AS THAT TERM DEFINED IN ARTICLE 9 OF THE UCC (a AND b COLLECTIVELY, THE "COLLATERAL").

CUSTOMER AND BENSERON INFORMATION TECHNOLOGIES, INC. ® EACH ACKNOWLEDGE AND AGREE THAT ANY SECURITY INTEREST GRANTED TO

BENSERON INFORMATION TECHNOLOGIES, INC. ®, UPON EXECUTION OF THIS AGREEMENT, WILL SECURE THE OBLIGATION UNTIL FULLY SATISFIED.

**30 - NEGATIVE PLEDGE**

CUSTOMER AND GUARANTOR EACH AGREES NOT TO CREATE, INCUR, ASSUME, OR PERMIT TO EXIST, DIRECTLY OR INDIRECTLY, ANY LIEN ON OR WITH RESPECT TO ANY OF THE COLLATERAL, AS APPLICABLE.

**31 - REMEDIES**

UPON ANY EVENT OF DEFAULT, BENSERON INFORMATION TECHNOLOGIES, INC. ® MAY PURSUE ANY REMEDY AVAILABLE BY LAW (INCLUDING THOSE AVAILABLE UNDER THE PROVISIONS OF THE UCC), OR IN EQUITY TO COLLECT, ENFORCE, OR SATISFY ANY OBLIGATION THEN OWING, WHETHER BY ACCELERATION OR OTHERWISE.

This Agreement is effective only upon execution by an authorized officer of BENSERON INFORMATION TECHNOLOGIES, INC. ® following Customer's execution hereof. Customer hereby authorizes BENSERON INFORMATION TECHNOLOGIES, INC. ® to disburse the Total Advance as reflected on the Pay Proceeds Direction attached to each Invoice.

Refund Policy: All amounts paid by Customer under this Agreement are non-refundable without BENSERON INFORMATION TECHNOLOGIES, INC. ®'s prior written consent. See BENSERON INFORMATION TECHNOLOGIES, INC. ®'s Refund & Return Policy

The parties have executed this Sales Terms and Conditions Agreement and by doing so agree to all the terms.

BENSERON INFORMATION TECHNOLOGIES, INC. ®  
Customer

Signature: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Date: \_\_\_\_\_

**PERSONAL GUARANTEE**

In Consideration of BENSERON INFORMATION TECHNOLOGIES, INC. ® extending future credit under this Agreement to the Customer, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor, personally

guarantees the prompt, full and complete performance of any and all duties, obligations, and indebtedness, including but not limited to late payment fees, indemnification amounts, card member disputed charges, ACH charges and any other amounts incurred under this Agreement (the "Debt") due to BENSERON INFORMATION TECHNOLOGIES, INC. ® by the Customer, under the terms of this Agreement.

Guarantor: \_\_\_\_\_

Print name: \_\_\_\_\_

Date: \_\_\_\_\_