

**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.

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: \_\_\_\_\_