

BECPOS

Aloha[®]

Point of Sale System

To

The City Of Grand Junction

North Ave
Grand Junction, CO 81501
970-261-3680 Work

Prepared by
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BEC
5610 Ward Road
Suite 200
Arvada, CO 80002
303-623-1143 Work
303-623-0219 Fax

3/3/2012
Proposal Valid For 30 Days



BEC POS

SCHEDULE A Vendor Proposal

Customer Needs and Requirements:

The initial discussions revealed the following general customer needs and system requirements:

- Fast and easy order entry for Servers and Cashiers
- Secure cashier banking with blind drops
- Splitting checks, splitting items, split tenders and equal pay split totals features
- Labor Scheduling and timekeeping reporting
- Management Privileges of Comps, Promotions and Voiding
- Management reporting of product sales mix
- Remote access using Radiant Systems "Command Center" aka RDF
- Transfer of Checks from Bussers to Servers or Servers to Cashiers
- Touch Floor Plan Server or Hostess Interface
- Credit Card Authorization Software (High speed authorizations available with customer's DSL)
- Additional "OPEN" food and beverage pricing
- 100% Windows environment, PC based
- Hardware Service and ongoing Software Support
- Customizable Reports

General Proposal:

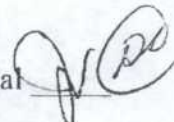
BEC proposes the following hardware and software solution(s):

- Open architecture, Window's-based touch screen hardware platform operating in a local area network configuration with complete manager's back office workstation.
 - **Aloha POS** software package (Version 6.7.xx):
 - Time and Attendance, Labor Scheduling, Multiple Event Timing with automatic end of day multi-media functionality, on screen recipe links, 10,000 House accounts, Bar code scanning for up to 10,000 PLUs, Bar code scanning for House Account information, Bar code scanning for ticket recall.
 - **Aloha EDC** (credit card authorization software)

Communication Requirements

Customer must have a DSL or broadband connection for Internet credit card authorizations and remote support. A phone line is still suggested for the automated dial-up back-up authorization feature of Aloha EDC. That phone line can be generally shared with a fax line. However, credit card authorizations will be interrupted by the use of the fax.

Customer should provide one phone line for the software support modem (second phone line can be shared with a readily available fax or extra voice line). BEC uses Radiant Systems "Command Center" application and "Log MeIn" to provide remote access to your system in the event a software question requires internet/dial-in support.



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SCHEDULE B SALES CONTRACT

This AGREEMENT (the "Agreement"), effective 4/15, 2012, is by and between Electronic Calculators, Ltd., a Colorado corporation D/B/A Business Equipment Consultants or BEC ("BEC"), 5610 Ward Rd - Suite 200 - Arvada, CO 80002 and The City of Grand Junction (the "Customer") (collectively, the "Parties", or individually, a "Party").

In consideration of their mutual promises set forth below and other valuable consideration, the Parties agree as follows:

1. **Purchase of Point of Sale System.** On and subject to the terms and conditions of this Agreement, the Customer agrees to purchase from BEC, and BEC agrees to sell to the Customer, all of the equipment and services enumerated in Schedule C attached hereto, including any applicable software licenses (collectively referred to herein as the "System"), free and clear of any Security Interest except those security interests created by, or referred to in, this Agreement, for the consideration specified below in Section 4.

2. **Services.** BEC will perform, or cause to be performed, the services enumerated below in this Section 2 for the Customer. All services performed under this Section 2 will be provided during BEC's normal business hours. If after hours or weekend services are requested by Customer, BEC reserves the right to invoice Customer for such work separately from this Agreement at BEC's then prevailing rates. Any such invoice will be due 30 days from the invoice date. Customer agrees that they will be responsible for all travel expenses incurred by BEC employees in the course of providing services under this section 2 if the customer's location is outside of the greater Denver metropolitan area. This includes, but is not limited to, flights which will be booked two weeks prior to installation when possible, a comfortable yet reasonable hotel, an inexpensive rental car, per-diem, and parking.

A. **Site evaluation and consultation:** BEC may visit the Customer's place of business (the "Location") and evaluate the Location's infrastructure requirements for a proper implementation of the System. Customer will make available all qualified personnel required by BEC for consultation in order to perform a proper site evaluation. During the site evaluation and consultation, Customer will communicate all of its POS requirements and any unusual conditions required to be accounted for by BEC to prepare a complete site evaluation. BEC will thereafter coordinate with Customer for the delivery and installation of the System. The Parties will mutually agree upon a delivery date for the System (the "Delivery Date").

B. **Installation - Acceptance by Customer:** The Purchase Price includes all installation services enumerated in Schedule C. The System shall be deemed accepted by Customer when the equipment comprising the System is physically delivered if no installation services have been specified. If installation services are specified in Schedule C, the System shall be deemed accepted by Customer when the equipment comprising the System has been installed and made ready for use at the Customer's Location.

C. **Installation - Customer Responsibilities:** Unless otherwise specified, the services contained in Schedule C do not include the data and phone cabling required for installation of the System. If cabling is not specifically enumerated in SCHEDULE C, or the Customer has not made other arrangements, BEC will assist Customer in contracting with a third party cabling company to provide the required cabling. If Customer provides the cabling, Customer acknowledges that it is aware of, and will comply with, BEC's minimum specifications and requirements for said cabling. SCHEDULE C assumes that the Customer is providing a suitable and safe environment for the System, including an adequate number of 120VAC electrical outlets of proper voltage and amperage. BEC reserves the right to retain, at Customer's sole expense, a third party cabling company to inspect all cabling performed prior to installation. If such pre-installation work has not been adequately provided by the Customer, BEC shall have the discretion to retain a third party cabling company to provide such services, and invoice the Customer for any costs incurred, or to re-schedule the installation at the Customer's sole expense. In order for a stable data network to be established, all electrical outlets used in the System must originate at a common panel/subpanel. It is REQUIRED that the proper line conditioning equipment be used in conjunction with the System. If the proper line conditioning equipment is not specifically enumerated in Schedule C, and is deemed necessary by BEC for proper installation and operation of the System, BEC will duly note and install the proper devices during the warranty period to protect the System, and this equipment shall remain the property of BEC. At the end of the warranty period, this equipment will be removed from the Customer's System and the Customer will sign a waiver stating that its System is unprotected. After the initial installation, any and all subsequent visitations to Customer's location for alterations, modifications or corrections to the System by BEC will be invoiced separately from this Agreement at BEC's then prevailing rates. Any such invoice will be due 30 days from the invoice date.

D. **Programming, Training and Support:** The Purchase Price includes all programming, training and support services enumerated in Schedule C. For ongoing support services after the initial installation, programming and training please refer to the Help Desk Subscription Agreement included in your first invoice or upon request. Customer agrees to allow BEC to remotely link to Customer's computer system via the internet through a supervised VPN session or other Customer approved method for purposes

BEC POS

of monitoring the Customer's use of the System, providing support for the System, and enforcing BEC's rights under this Agreement.

3. **Purchase Price and Payment Schedule.** In consideration for the System and the services to be performed by BEC, the Customer agrees to pay to BEC an aggregate amount equal to \$ 22,594.00, plus all applicable sales tax, insurance, license fees, and shipping charges (the "Purchase Price"). The Purchase Price will be paid as enumerated in Schedule C.

4. **Security Interest.** Customer agrees to grant a purchase money security interest to BEC in the System until Customer has paid for the System in full. Customer agrees to execute and deliver, and hereby authorizes BEC to execute and file, such financing statement or statements, or amendments thereof or supplements thereto, or other documents as BEC may from time to time require in order to comply with the Colorado Uniform Commercial Code and to preserve and protect the BEC's right to the System. BEC shall have all of the rights and remedies available to a secured party under a purchase money security interest when a borrower is in default under a security agreement governed by Article 9 of the Colorado Uniform Commercial Code (including the power to peaceably take possession of the System), and any and all of the rights and remedies available to a secured party at law and in equity, all of which rights and remedies shall be deemed cumulative. Customer shall insure and keep the System in good working order and repair until the Purchase Price has been paid in full to BEC, and shall promptly pay all taxes and assessments imposed upon the System or the use of the System, and shall provide evidence thereof to BEC upon demand.

5. **Cancellation by Customer.** The Customer may cancel this Agreement at any time prior to thirty days before the Delivery Date by sending written notice of cancellation to BEC pursuant to section 19. If Customer cancels this Agreement thirty or more days prior to the Delivery Date, Customer will be liable for a cancellation charge equal to fifteen percent (15%) of the Purchase Price. If written notice of cancellation is not received by BEC more than thirty days before the Delivery Date, the Customer will be liable for the entire Purchase Price. Any charges assessed against the Customer pursuant to this Section 6 will be deducted from amounts already paid by Customer to BEC. Any amounts not retained by BEC pursuant to this Section 6 will be returned to the Customer within thirty days of BEC's receipt of Customer's cancellation notice. If Customer owes any charges pursuant to this Section 6 that are in excess of what has been paid to BEC, Customer shall pay all such charges within thirty days of Customer's cancellation notice.

6. **Delay.** The Customer acknowledges that some components of the System may need to be ordered from third parties by BEC. Postponement of the Delivery Date or installation due to third party delays shall not subject BEC to any liability for damages of any kind or nature suffered by the Customer. Further, BEC shall not be liable for any damages of any kind or nature suffered by the Customer because of a delay in the Delivery Date or the installation or training that was due to, or reasonably within the control of, the Customer.

7. **License Agreements.** The Customer agrees to perform all of Customer's duties and obligations under any software license agreement transferred pursuant to the terms of this Agreement. The Radiant End User License Agreement (EULA) is available through Aloha Manager with your user name and password, select help from the top menu, then License Agreement. BEC reserves the right to take all legal and technical steps, including automatic shut down, to protect its rights under this Agreement.

8. **Location.** Until the Purchase Price is paid in full by the Customer, the System shall not be removed from the Location without prior written consent from BEC. BEC shall have the right to inspect the Equipment during Customer's regular business hours.

9. **Existing Hardware.** The Customer shall be solely responsible for all maintenance and warranty claims pertaining to any hardware the Customer has made available to BEC for incorporation and use with the System. If deemed necessary at the sole discretion of BEC, the hardware made available by Customer may be updated or serviced by BEC to make such hardware compatible with the System. Any and all such work not included within Schedule C may be provided by BEC and will be invoiced separately from this Agreement at BEC's then prevailing rates and will be due 30 days from the invoice date. BEC can supply rental terminals to Customer at a flat rate of \$350.00 each not to exceed 10 days in which to give Customer the opportunity to purchase replacement units.

10. **Limited Warranties.** The hardware and software enumerated on Schedule C carry the applicable warranty provided for by the manufacturer or licensor, as applicable. In addition to the warranties provided by the manufacturers, BEC warrants that the System will be in good working order on the date of physical delivery (or the date of installation if installation is specified in Schedule C), and for one year thereafter, and that the System will substantially conform on the date of physical delivery or installation, as applicable, to the manufacturer's published specifications, if any, on that date. BEC's obligations hereunder shall be limited solely to making, at BEC's expense, such repairs and replacements as are necessary to put the System in good working order and to substantially conform the System to the manufacturer's published specifications, if any. This warranty is in lieu of all other warranties, whether express or implied, including without limitation, implied warranties of merchantability and fitness for a particular purpose. Additional protection is available only pursuant to BEC's form of support plan agreement for hardware repair and/or software support plan agreement.

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of the equipment comprising the System purchased from BEC. In addition to any express warranties set forth herein, Customer may be entitled to the benefit of certain limited warranties provided directly by the manufacturer or developer of the products composing the System. BEC assumes no liability for, nor responsibility under, any third party warranties unless such liability or responsibility is specifically set forth in this Agreement. Any warranty provided for by BEC hereunder shall exclude: (1) repairs resulting from accident or misuse of the System (including, but not limited to, improperly supplied voltage, line noise, excessive temperature, or use of any supplies or other peripherals which do not conform to BEC's specifications); (2) repairs or damaged components of the System that were serviced, modified or programmed by anyone other than BEC or a BEC authorized representative; (3) relocation, de-installation, reconditioning of the System; (4) replacement of consumables associated with the System; (5) any damage caused by the use of Customer's own hardware in conjunction with the System; and (6) any file reconstruction or recreation of lost data. Except as expressly provided for herein, Customer takes and accepts the System as is.

11. Limitation of Liability. Customer agrees that the System has been selected by the Customer and is of a design, size, fitness and capacity selected by the Customer and that the Customer is satisfied that the same is suitable and fit for the Customer's purpose. Customer hereby waives any claim Customer may have against BEC for any loss, damage, or expense of any kind whatsoever caused by the System or by any defect therein, the use or maintenance thereof, or any servicing or adjustment thereto, not expressly covered by the warranty contained in this Agreement. Customer further agrees that BEC will not be liable, regardless of the form of action, whether in contract, warranty, or in tort (including negligence and strict liability), for any direct, indirect, incidental, consequential, punitive or special damages arising from loss of use of the System, lost or corrupted data, theft of data, lost profits, cost of capital, cost of substituted products, facilities, services, replacement power or downtime costs, or for any claim or demand against the Customer by any other party. BEC's total liability to Customer under this Agreement, including BEC's liability for failure after repeated efforts to install the System in good working order or to repair or replace a component of the System in accordance with the warranty in section 10, shall in no event exceed the allocated cost paid by the Customer for the specific component(s) of the System, software licensed to Customer, or service provided by BEC which gives rise to the claim. All software is sold or licensed "as is" without any warranty, express or implied, from BEC. Customer shall make any and all claims regarding software against the developer or licensor of the software and not against BEC. Upon delivery, Customer assumes all risk and liability for the loss of, or damage to, the System. Additionally, Customer assumes all risk and liability for the death of, or injury to, any person or property, and for all other risks and liabilities arising from the use, condition, possession, or storage of the System. Nothing in this Agreement will act to authorize Customer or any other person or entity to operate any component of the System so as to impose any liability or other obligation on BEC. Any liability assumed by BEC hereunder shall terminate upon the expiration of this Agreement.

12. Indemnity. Customer will indemnify, defend, protect and hold harmless BEC, its agents, and employees from all claims, loss, or damage that BEC may sustain or suffer for any of the following reasons: (i) loss of or damage to any component or element of the System from any cause; (ii) injury to or death of any person including but not limited to agents or employees of Customer; or (iii) damage to any property arising from the use, condition, possession, or storage of component or element of the System. Customer will reimburse BEC for all expenses, losses, liabilities, and claims of any type, including reasonable attorneys' fees, imposed on or incurred by BEC because of Customer's use or operation of the System, or because of the failure by Customer to perform any of the terms herein.

13. Taxes. All Customers operating in the State of Colorado shall pay to BEC all taxes, including all taxes and charges imposed on sales, possession, or use of the System during the term of this Agreement. If Customer is operating outside of the state of Colorado, Customer shall be solely responsible for reporting and paying all taxes and charges imposed on the sale, possession, or use of the System arising or becoming due during the term of this Agreement. Customers operating outside the state of Colorado agree to provide BEC with proof of payment of all applicable state and local taxes assessed against the System or any component thereof, or the use the System within 30 days of Customer's payment thereof. Said proof of payment shall either be faxed to BEC at 720-881-2639 or emailed to BEC at Audrey@becpos.com.

14. Non-Solicitation / Non-Hire. Without first obtaining the prior written consent of BEC, Customer agrees not to solicit, hire or otherwise engage in any manner whatsoever, directly or indirectly, any of BEC's employees from the effective date of this Agreement and for a period of two years after termination of this Agreement. If the Customer violates this provision, the Customer shall pay to BEC an amount equal to the employee's salary that the Customer hired away from BEC on a semi-monthly basis until BEC has found and hired a suitable replacement for such employee. The Parties agree that this sum is a reasonable approximation of the damages BEC would suffer from a breach of this provision.

15. Services Provided Exclusively Through BEC. Customer agrees that it will not solicit or offer any employee of BEC consideration of any kind or form for providing services to the Customer's System that are outside of the terms of this Agreement. Any and all requests for service to the System MUST be made through BEC directly. Customer agrees not to solicit any off-hours or other work from any BEC employee wherein the Customer would provide consideration to the employee directly instead of to BEC.

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16. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

17. **Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. The Customer may not assign either this Agreement or any of its rights, interests, or other obligations hereunder without the prior written approval of BEC. BEC may assign either this Agreement or any of its rights, interests, or other obligations hereunder without the prior written approval of the Customer.

18. **Headings.** The section and paragraph headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

19. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed effective: (i) upon personal delivery; (ii) two (2) business days after it is deposited in a regularly maintained depository of the United States Postal Service, registered or certified mail, postage prepaid, return receipt requested; (iii) on the next business day after having been put in physical control of a bonded overnight delivery courier service; or (iv) on the next business day after having been sent by facsimile transmission on a machine capable of verifying receipt, and addressed or sent as follows:

If to BEC:

BEC - POS
ATTN: Richard Adams
5610 Ward Road, Suite 200
Arvada, Colorado 80002
FAX: 303-623-0219

If to Customer:

ATTN: _____

FAX: _____

Either Party may change the address to which notices are to be sent by giving the other Party notice in the manner set forth herein.

20. **Governing Law.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (either of the State of Colorado or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Colorado.

21. **Amendments and Waivers.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each of the Parties. No waiver by either Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

22. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

23. **Dispute Resolution.** Venue for any controversy or claim arising out of or relating to this Agreement shall be in Jefferson County, Colorado. In the event either party shall be required to enforce the terms of this Agreement by suit or otherwise, the losing party shall pay the other party's costs and expenses incident to any such suit or proceeding, including a reasonable attorney's fee.

24. **Incorporation of Exhibits.** Any schedules, addendums, exhibits or other documents identified in this Agreement are incorporated herein by reference and made a part hereof.

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

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otherwise agreed at the time). Customer expressly and knowingly waives any claims hereunder against BEC, to the extent arising from Customer's failure to have or maintain current virus or spyware protection, or to the extent arising as a result of a failure or breach of Customer's security for its systems or data, or as a direct or indirect result of unauthorized access to Customer's System by persons or entities other than BEC's personnel. **CUSTOMER EXPRESSLY ACKNOWLEDGES THAT CREDIT CARD PROVIDERS, BANKS, AND CREDIT CARD PROCESSING COMPANIES IMPLEMENT AND REQUIRE SPECIFIC POLICIES IN CONJUNCTION WITH THEIR CARDS AND SERVICES. CUSTOMER SHALL BE SOLELY AND EXCLUSIVELY RESPONSIBLE FOR COMPLIANCE WITH ALL POLICIES, RULES, REGULATIONS, AND PROCEDURES REQUIRED BY THE CREDIT CARD COMPANIES, BANKS, AND/OR PROCESSORS IT ELECTS TO ACCEPT OR UTILIZE, AS WELL AS COMPLIANCE WITH ALL APPLICABLE GOVERNMENTAL RULES AND REGULATIONS.**

26. Customer Passwords. CUSTOMER HEREBY EXPRESSLY ACKNOWLEDGES THAT IT HAS THE SOLE OBLIGATION TO ESTABLISH AND MAINTAIN ITS OWN SECURE PASSWORDS OR PASSCODES TO ACCESS THE SOFTWARE AND THE SYSTEM AFTER DELIVERY OR INSTALLATION OF THE SYSTEM BY BEC.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT AND UNDERSTANDS AND AGREES TO ALL THE TERMS AND CONDITIONS STATED IN THIS AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

BEC By: Richard Adams Title: VP SALES

Signature: Rick Adams Date: 4/5/2012

Customer

Company: City of Grand Junction

By: J. Vall Jay Valentine Title: Financial Operations Manager

Signature: J. Vall Date: 4/5/12

Terms and Conditions:

50% down - balance on delivery or before products ship.

Leasing available WITH APPROVED CREDIT and a 15% security deposit. (The Customer) will contact the Lease Company and release all remaining funds at time of delivery or before shipment.

Credit Card (check one): Mastercard Visa American Express Discover

Credit Card Number: _____

Expiration Date: _____

CVC: _____

Name (as it appears on card): _____

Phone Number: _____

Billing Address: _____

City: _____

State: _____ Zip: _____

I hereby authorize BEC to charge my credit card for \$ _____ for the amounts set forth according to Schedule C.

Outstanding balances past due dates are subject to an INTEREST CHARGE of 1.5% per month (18% per annum) being assessed and payable. Checks returned for insufficient funds are turned over to collections and a \$25 fee will be charged.

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Network Security Services – Acknowledgement and Service selection

Please Select which network security option below will be used at your business.

I choose to subscribe to Radiant Security Services (By selecting "Radiant Security Services," I agree to subscribe to or purchase one of the Radiant Security Services Options below.) Please select from the following:

Radiant Security Services Bundle - \$100 Per Month / \$500 Installation & Activation
Radiant Security Service Bundle includes a subscription to Site to Shield, Threat Defender, Secure access and \$50,000 of Breach Assistance.

Site Shield Only - \$60 Per Month/ \$500 Installation & Activation
By selecting "Site Shield Only", Radiant Systems will provide and maintain a Hardware Firewall and its Security updates and configurations at my business. I decline to subscribe to additional security services From Radiant Systems, and will not receive any enhanced site security benefits available as a result of additional subscriptions, such as security scanning, program white listing, breach assistance and secure remote access, which are available with Radiant Security Services Bundle.

Please see the attached Hosted Solutions Order Form to select one of the Radiant Security Services Options listed above.

WatchGuard XTM 2, Unmanaged
By selecting "WatchGuardXTM2, Unmanaged" I agree to purchase the WatchGuard XTM 2 Firewall or such other then- currently available firewall from my Authorized Aloha Reseller at the per unit price determined by my reseller. I agree that maintaining this firewall's security updates and secure configurations is my responsibility. I decline to subscribe to additional security services from Radiant Systems, and will not receive any enhanced site security benefits available as a result of subscriptions to Radiant Security Services. I understand and agree that Radiant Systems and my reseller shall have no responsibility to provide any data security functions for my site offered as part of Site Shield, Threat Defender, Site Shield, Breach Assistance or Radiant Security Services.

No Radiant Supplied Network Security Services – By selecting "No Radiant Supplied Network Security Services," I decline to subscribe to Radiant Security Services, or any Manages Security Service from Radiant Systems, and will not receive any enhanced site security benefits available as a result of a subscription, such as firewalls, security scanning, program white listing, breach assistance and secure remote access, which are available options with a Radiant Security Services subscription. I understand and agree that Radiant Systems and my reseller shall have no responsibility to provide any data security functions for my site offered as part of Site Shield, Threat Defender, Breach Assistance or Radiant Security Services.

Acknowledgment

Regardless of whether or not I have opted to subscribe to Radiant Security Services, I confirm that I have been informed by Radiant Systems and my reseller of the need for strong network security at my site. I acknowledge that data security at my site is ultimately my responsibility, and that I am responsible for complying with applicable Payment Card Industry Data Security Standards as described at WWW.pcisecuritystandards.org, as well as any other applicable industry or legal requirements.

[Signature] Date 4/4/12 Title Financial Op. Mgr Phone Number 248-1517

City of Grand Jct. 250 N. 5th St. Grand Jct., CO 81501

Business Name Site Street Address City State Zip

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SCHEDULE C

This schedule sets forth the terms and/or services which are to be conveyed hereunder, and the itemized charge for each item or service provided if applicable.

QTY		UNIT	TOTAL
<u>POS HARDWARE & PERIPHERALS</u>			
1	GS108 10/1000 Switch	\$95.00	\$95.00
4	Radiant 2x20 Tilt Display 1500-1520	\$225.00	\$900.00
8	Patch Cable	\$15.00	\$120.00
5	Radiant Green Radangle Adapter Rj45 F To Rj12 M.	\$0.00	\$0.00
5	Ms 16.8 Cash Drawer 12V POS 5B5C	\$225.00	\$1,125.00
5	Radiant P1515 RES Touch Terminal 4GBuSSD WES Igb	\$1,695.00	\$8,475.00
2	Epson U220B Acut Gray SERIAL Printer	\$325.00	\$650.00
5	Epson TM-T88V /Thermal Printer, Autocut	\$395.00	\$1,975.00
HARDWARE SUBTOTAL			\$13,340.00
<u>POS SOFTWARE AND MODULES</u>			
1	Radiant Deployment Framework	\$75.00	\$75.00
1	Aloha Usb Key	\$0.00	\$0.00
5	ALOHA POS - TS - License	\$895.00	\$4,475.00
1	TS 4+ Electronic Payments	\$1,080.00	\$1,080.00
1	Aloha Quick Count	\$0.00	\$0.00
1	Customer Satisfaction Survey	\$0.00	\$0.00
SOFTWARE SUBTOTAL			\$5,630.00
<u>POWER CONDITIONING/BATTERY BACKUPS</u>			
1	Oneac Oneplus400 Onegrnd Power Conditioner Ups	\$349.00	\$349.00
1	Oneac Oneplus250 Onegrnd Power Conditioner Ups	\$250.00	\$250.00
2	Oneac Oneground 75va Power Conditioner	\$145.00	\$290.00
4	Oneac Oneground 180VA Power Conditioner	\$175.00	\$700.00
POWER CONDITIONING SUBTOTAL			\$1,589.00
<u>Subtotal Hardware, Software, Power Protection</u>			<u>\$20,559.00</u>
<u>PROGRAMMING, INSTALLATION, TRAINING & SUPPORT</u>			
2	In Shop Labor	\$95.00	\$190.00
1	On-line access to BEC eLearning Certification & In House Go Live Training	\$300.00	\$300.00
1	Sales Lodging	\$300.00	\$300.00
1	Per Diem Per employee	\$200.00	\$200.00
1	Mileage and Transportation - Denver Metro	\$250.00	\$250.00
5	Tier 1 HWE Contract-SBD 7x24 P&T per terminal per year	\$99.00	\$495.00
1	Annual Help Desk Support W/CC Access 3-5 Terminals	\$800.00	\$800.00
1	In House Program Approval with FOH Manager Training	\$300.00	\$300.00
1	In House Database Build Labor (Based on number of items and modules)	\$600.00	\$600.00
1	In House Unbox, Hardware Imaging, Network Lab, Configuration, Testing and Burn-in Labor	\$600.00	\$600.00

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1	Discovery and Site Survey Labor	\$300.00	\$300.00
1	Project Management, Coordinating all 3rd Parties Labor (Electrical, Wiring, Internet, EDC)	\$200.00	\$200.00
1	On-site Configuration, Installation and Data Cable Testing Labor	\$400.00	\$400.00
1	On-site Staff Training and Testing Labor	\$600.00	\$600.00
1	On-site Live Standby Labor Support First Shift and one day Follow up	\$600.00	\$600.00
1	On-site Live Standby Labor Support - Second Shift	\$300.00	\$300.00
	PIT & SUPPORT SUBTOTAL		\$6,435.00
		SUB	\$26,994.00
	Customer Discount		\$4,400.00
	*TOTAL SALES PRICE		\$22,594.00
	*Please allow for applicable tax		



March 29, 2012

Traci Wieland
Recreation Superintendent
Grand Jct Parks & Recreation
970-254-3846
traciw@gjcity.org

Dear Traci,

Regarding your concern related to the End User License Agreement (EULA), I have discussed with Lisa DeCaprio, an attorney within our Legal Department. Our understanding is that the company you represent, the City of Grand Junction, is purchasing the Aloha solution for use within their venue. From time to time, the City of Grand Junction may allow their venue to be used by other organizations, whom we would consider to be the City of Grand Junction's authorized users of the software/solution. As long as those authorized users comply with the terms and conditions of the End User Software License Agreement, we see no conflict or issue with this.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lyn Ivester".

Lyn Ivester
Director of Operations
Radiant Systems/NCR Hospitality Channel

Cc: Richard Adams, BEC

3925 Brookside Parkway
Alpharetta, GA 30022
tel: 770-576-6000
fax: 770-754-7790



RADIANT END USER LICENSE AGREEMENT AND LIMITED PRODUCT WARRANTY

THIS LICENSE AGREEMENT ("AGREEMENT") REPRESENTS THE AGREEMENT BETWEEN YOU AND RADIANT SYSTEMS, INC. ("RADIANT"), CONCERNING THE LICENSE FOR YOU TO USE RADIANT'S SOFTWARE ("SOFTWARE"). YOU HEREBY AGREE TO BE BOUND BY THE FOLLOWING TERMS:

1. **License Grant.** The Software is a product of Radiant Systems, Inc. ("Radiant"). You are responsible for selecting the Software to achieve Your intended results and for the installation, use and results obtained from the Software. In consideration for the license fees paid by You for the license of the Software, Radiant hereby grants to You, and You accept, a non-exclusive, non-transferable and limited revocable license to use the Software and the accompanying user documentation ("Documentation") only as authorized in this Agreement. The Software and Documentation are licensed to You solely for Your internal business use at the locations authorized by Radiant or one of Radiant's authorized resellers. If Hosting Services are provided to You as part of this Agreement, access to the Software that has been licensed to You pursuant to this Section 1 shall be provided via the Internet pursuant to the terms of Section 4. In order for the Software to operate on Your system, You may have been given a Security HASP Key ("Key"). The replacement value of the Key is the purchase price You paid for the license of the Software. No Key will be replaced if it is lost, stolen or destroyed and it is Your responsibility to insure this asset as You would insure any other asset of significant value.

2. **Restrictions. WITHOUT THE PRIOR WRITTEN CONSENT OF RADIANT, YOU MAY NOT:**

- (i) ASSIGN, SUBLICENSE, TRANSFER, PLEDGE, LEASE, RENT OR SHARE YOUR RIGHTS TO USE THE SOFTWARE UNDER THIS AGREEMENT OR USE, COPY OR MODIFY THE SOFTWARE, IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PERMITTED IN THIS AGREEMENT;
- (ii) DECOMPILE, REVERSE ASSEMBLE OR OTHERWISE REVERSE ENGINEER THE SOFTWARE, EXCEPT TO THE EXTENT YOU ARE EXPRESSLY AUTHORIZED TO DO SO UNDER APPLICABLE LAW;
- (iii) REPRODUCE, DISTRIBUTE OR REVISE THE SOFTWARE OR DOCUMENTATION, EXCEPT AS EXPRESSLY PERMITTED HEREIN;
- (iv) USE THE SOFTWARE TO PROVIDE FACILITY MANAGEMENT, SERVICE BUREAU OR OTHER ACCESS AND USE OF THE SOFTWARE TO THIRD PARTIES;
- (v) DISCLOSE TO ANY THIRD PARTY THE DOCUMENTATION OR ANY OTHER PROPRIETARY INFORMATION OF RADIANT RELATING TO THE SOFTWARE;
- (vi) INTERFACE THE SOFTWARE TO ANY THIRD PARTY APPLICATION THAT REQUIRES USE OF A RADIANT PROPRIETARY INTERFACE UNLESS YOU OBTAIN A CORRESPONDING LICENSE FOR SUCH INTERFACE FROM RADIANT OR ONE OF RADIANT'S AUTHORIZED RESELLERS;
- (vii) USE THE SOFTWARE IN A MANNER OR AN ENVIRONMENT THAT DOES NOT COMPLY WITH THE APPLICABLE PROVISIONS OF THE PAYMENT CARD INDUSTRY DATA SECURITY STANDARD ("PCI-DSS");
- (viii) ALLOW UPGRADES TO THE SOFTWARE TO BE PERFORMED BY ANYONE OTHER THAN A RADIANT-CERTIFIED PROVIDER; OR
- (ix) USE ANY REMOTE ACCESS APPLICATION TO ACCESS THE SOFTWARE, EXCEPT AS APPROVED BY RADIANT.

IF YOU FAIL TO COMPLY WITH ANY OF THE TERMS OF THIS AGREEMENT, YOUR LICENSE AND RIGHT TO USE THE SOFTWARE WILL BE AUTOMATICALLY TERMINATED. SUCH TERMINATION SHALL BE IN ADDITION TO AND NOT IN LIEU OF ANY CRIMINAL, CIVIL OR OTHER REMEDIES AVAILABLE TO RADIANT.

3. **Radiant's Rights.** You acknowledge and agree that the Software (including its code, appearance, structure and organization) and the accompanying Documentation are proprietary products of Radiant protected under copyright and other laws, and that all right, title, and interest in and to the Software and any modifications or derivative works thereto shall remain with Radiant. This Agreement does not convey to You an interest in or to the Software, but only a limited right to use the Software revocable in accordance with the terms of this Agreement.

4. **Hosting Services.** The terms set forth in this Section 4 only apply to Software that is being hosted by Radiant. In accordance with Radiant's standard hosting policies and procedures (the "Hosting Policy"), Radiant shall establish and maintain the most recent version of the Software that has been licensed by You and the operating systems, application software (excluding the Software), designs, architecture, communications networks, firewalls, load balancers, servers, switches, hubs, routers and other hardware and Documentation to be provided by Radiant ("System") to enable You to access and use the Software via the Internet (the "Hosting Services"). You shall be responsible for providing Internet access to the System and in no case will You be provided with direct access (by modem or otherwise) to the server where the Software resides or Radiant's other computer systems.

You acknowledge and agree that Radiant may contract with one or more third parties to perform all or any portion of the Hosting Services provided, however, that Radiant shall remain responsible for the performance of the Hosting Services consistent with the terms of this Section. You agree to communicate only with Radiant regarding the Hosting Services and not any third party provider. Software that is hosted by Radiant shall be capable of operating 24 hours a day, other than for interruptions due to service maintenance and upgrades, system failure, system back-up and recovery and for causes beyond Radiant's control.



As part of the Hosting Services, Radiant shall (i) purchase, install, monitor and maintain one or more data centers for the System (the "Data Center") as determined by Radiant, including any upgrades of the hardware environment at the Data Center and/or any System modifications as it deems necessary to meet its obligations under this Section solely in accordance with Radiant's standard procedures and policies; (ii) regularly backup critical data and perform recovery services as required and in accordance with the objectives set forth in the Hosting Policy; (iii) regularly monitor all servers and network equipment to ensure proper operation and check critical parameters (such as committed memory usage, processor utilization and disk space usage) for performance within established thresholds and guidelines; (iv) implement appropriate security processes and infrastructure in order to meet the requirements outlined in the Hosting Policy; (v) maintain disaster recovery capabilities in accordance with the Hosting Policy; and (vi) manage networking services within the Data Center (including connectivity from the Data Center to the Internet) so as to meet the requirements of this Section.

Radiant's performance obligations under this Section specifically exclude the following: (i) any operations associated with non-production or test web sites or systems not directly managed by Radiant; (ii) the performance of public or private Internet backbones or networks not directly managed by Radiant; (iii) outages or issues caused by Your negligence, or by Your misuse or improper configuration of the Software, or due to Your failure to follow documented procedures regarding the use of the Software; (iv) outages or issues resulting from equipment managed by You or outages occurring as a result of any actions taken by Radiant at Your request or direction; (v) outages initiated by Radiant at Your request or direction for backup, maintenance or other purposes; and (vi) any professional or supplemental services outside the scope of the Hosting Services, including but not limited to: (a) content management (except as otherwise agreed by Radiant in writing); (b) implementation, management and support of non-standard interfaces; (c) custom data conversion services; (d) system configuration services; (e) application data maintenance (such as, but not limited to, price book, vendor, site, and product information maintenance); (f) custom reporting requirements outside of those offered in the Software; and (g) hosting of any Software functionality other than that specified with the Software.

To facilitate Radiant's provision of the Hosting Services in accordance with this Section, You agree to undertake the following: (i) maintain equipment and networks owned by You and systems and systems interfaces managed by You used to access the System to appropriate minimum standards; (ii) abide by the security procedures specified by Radiant and perform reasonable and customary security practices to preclude attempts to circumvent any security procedures or utilize any unauthorized systems in an attempt to access the data of another Radiant client; (iii) provide timely notification of any issues and give appropriate lead time to Radiant for any special requests; and (iv) make all reasonable efforts to assist Radiant in identifying, isolating and replicating issues found in the System.

In order to maintain reasonable production data storage requirements and to ensure proper performance of the System, Radiant shall establish standard procedures for data archiving and data purging with the System. You will be responsible for any and all retention of data, records or information required by law.

You shall be solely responsible for the manner in which You and Your authorized users use the System. You shall ensure that only authorized users have access to any user identifications or passwords for use in connection with the System and You shall not disclose such identifications or passwords to any other individual. You acknowledge and agree that it is Your responsibility to strictly maintain the confidentiality and integrity of such identifications and passwords and You shall indemnify and hold harmless Radiant from and against any liability, damages, or costs arising from Your failure to comply with this obligation including, but not limited to, improper or unauthorized access using Your user identifications or passwords, provided such identifications or passwords were not improperly disseminated by Radiant or any of its representatives. You shall notify Radiant immediately in writing if the security or integrity of an identification or password has been compromised. Radiant is not responsible for unauthorized access to the Software through usernames and passwords You maintain provided such unauthorized access was not directly caused by Radiant or any of its representatives.

Radiant is not responsible for Your acts or omissions, or those of Your representatives, that result in failure of, or disruption to, the Hosting Services. You agree that neither You nor Your representatives shall attempt in any way to circumvent or otherwise interfere with any security precautions or measures of Radiant relating to the Hosting Services. Any such attempts may, among other things, cause failure of, or disruption to, the Hosting Services. You will be responsible for, and will indemnify Radiant for, any damage or service interruptions caused by You or Your representatives in violation of this Section including, without limitation, any damage to any Radiant equipment or equipment managed for Radiant by another third party in connection with the Hosting Services. You agree to compensate Radiant, at its then-current professional services rates, for all remedial services or losses resulting from any violations of this Section. Radiant is not responsible for Your failure to adhere to and fully comply with the Hosting Policy.

5. **Term.** This Agreement is effective from the date of Your acceptance of these terms and conditions (as evidenced by Your clicking "I ACCEPT" or "I AGREE" or Your use of the Software) until terminated as provided hereunder. You may terminate this Agreement at any time by returning the Software and all copies thereof and extracts there from, including the accompanying Documentation, to Radiant or the authorized Radiant reseller from whom you made Your purchase. Radiant may terminate this Agreement, without further obligation to You, upon Your breach of any term hereof, including Your failure to pay any amounts owed to Radiant or its authorized resellers in respect of the Software or services provided by Radiant or such resellers. Upon such termination by Radiant, You agree to return to Radiant the Software and all copies thereof and extracts there from, together with the accompanying Documentation. Upon any termination of this Agreement, the provisions of the following section of this Agreement shall remain in effect: Sections 2, 3, 7, 8, 9, 10, 12, 15 through 21.



6. **Access to Your Computer System.** You agree to allow Radiant and its authorized resellers reasonable access to Your computer system and the Software in order to provide any applicable maintenance and support services, to verify license status, and to change settings and/or install or remove applications to address data security risks. You further agree to purchase, install and maintain Radiant-approved high-speed internet access in order to provide Radiant remote access to Your computer system. You acknowledge and agree that Radiant may use its Command Center product (or a successor product) in order to access Your system, and You agree that Radiant may load such product(s) and keep them updated on Your system as needed. Radiant may gather statistical information about Your sites including, without limitation, hardware information, software versions and feature usage, and use such information for valid business purposes such as product analysis and billing information. Additionally, Radiant and/or its authorized resellers may access configuration and operational data in connection with providing support services. Radiant may use and disclose transactional and system configuration information in the form of anonymous, aggregate usage statistics that Radiant derives from Your locations via Your use of the Software, but only in forms that do not reveal Your identity or Your confidential information, except as required by law or as needed in connection with any legal proceedings.

7. **Limited Warranty.** Radiant warrants to You only, for a period of 30 days from the date of delivery of the Software to You (referred to as the "Warranty Period"), that the Software shall operate substantially in accordance with the functional specifications in the accompanying Documentation. Radiant does not warrant that the functions contained in the Software will meet Your requirements or that the operation of the Software will be entirely error free or appear precisely as described in the accompanying Documentation. All services provided to You by Radiant hereunder shall be performed in a professional and workmanlike manner.

EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, THE SOFTWARE IS LICENSED, AND THE HOSTING SERVICES ARE PROVIDED, ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND AND RADIANT DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF ANY THIRD PARTY RIGHTS. RADIANT SHALL NOT BE BOUND BY OR LIABLE FOR ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, WITH RESPECT TO THE SOFTWARE OR THE HOSTING SERVICES MADE BY ANY THIRD PARTY, INCLUDING AN AUTHORIZED RESELLER OR ITS AGENTS, EMPLOYEES OR REPRESENTATIVES, NOR SHALL YOU BE DEEMED A THIRD PARTY BENEFICIARY OF ANY OBLIGATIONS OF RADIANT TO AN AUTHORIZED RESELLER.

The Internet web site operated by Radiant in connection with any Hosting Services provided by Radiant under this Agreement, which is identified by a unique uniform resource locator (the "Hosting Web Site") may contain hyperlinks to external Internet sites which are not under the control of Radiant. Radiant assumes no responsibility for the content or accuracy of information contained within such Internet sites and the appearance of such hyperlinks does not constitute any endorsement by or sponsorship of, nor affiliation with, the owners of such Internet sites nor the information, products, services and trademarks contained therein.

You understand and agree that use of, or connection to, the Internet is inherently insecure and that connection to the Internet provides opportunity for unauthorized access by a third party to Your computer systems or those of Radiant (including, but not limited to, the System), networks and any and all information stored therein. Radiant does not control the flow of data to or from the network and other portions of the Internet. INFORMATION TRANSMITTED AND RECEIVED THROUGH THE INTERNET CANNOT BE EXPECTED TO REMAIN CONFIDENTIAL, AND RADIANT DOES NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY AND NON-CORRUPTION OF ANY INFORMATION SO TRANSMITTED, OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. RADIANT SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF YOUR CONNECTION TO OR USE OF THE INTERNET, AND RADIANT SHALL NOT BE RESPONSIBLE FOR YOUR USE, OR YOUR REPRESENTATIVES' USE, OF ANY INTERNET CONNECTION IN VIOLATION OF ANY RULE, LAW OR REGULATION.

8. **LIMITATION OF LIABILITY.** To the maximum extent permitted by applicable law, the remedies described below are accepted by You as Your only remedies and shall represent Radiant's entire liability to You hereunder:

(i) If the Software fails to operate substantially in accordance with the functional specifications set out in the accompanying Documentation during the Warranty Period, You shall, prior to the expiration of the Warranty Period, report such defect to Radiant or Your authorized Radiant reseller in writing. In the event of a timely made report of a defect Radiant's and its authorized resellers' only responsibility will be to use reasonable efforts, consistent with then prevailing industry standards, to cure the defect.

(ii) RADIANT'S AND ITS AUTHORIZED RESELLERS' TOTAL LIABILITY TO YOU OR ANY OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY YOU DURING THE IMMEDIATELY PRIOR TWELVE-MONTH PERIOD FOR THE APPLICABLE PRODUCT OR SERVICE GIVING RISE TO SUCH DAMAGES. IN NO EVENT SHALL RADIANT OR ITS AUTHORIZED RESELLERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES, LOST SAVINGS OR LOST PROFITS, EVEN IF RADIANT OR ITS AUTHORIZED RESELLERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. **Payment Card Industry.** Radiant participates in the Payment Card Industry ("PCI") Payment Application Data Security Standard (the "PA-DSS") program. The parties acknowledge that the PA-DSS is subject to revision and clarification regarding security standards for payment applications, and that validation against the PA-DSS is an annual activity. Radiant agrees to use commercially reasonable efforts to gain annual validation against the PA-DSS. You agree to promptly implement software enhancements, including installation of new versions, made by Radiant to achieve and maintain validation against the PA-DSS. You acknowledge that You must remain current on software maintenance to receive new versions and updates to the Radiant Software, that You must use and configure the Radiant Software in a manner and in an environment that complies with the PCI Data Security Standard ("PCI-DSS"), and that You are responsible for Your own PCI-DSS compliance. You acknowledge that use of a PA-DSS validated payment application does not satisfy all of Your responsibilities to secure and protect Your network and information under the PCI-DSS. You are strongly advised to engage the services of a Qualified Security Assessor to: (i) ensure that no credit card track data is present on Your systems or network; (ii) determine Your level of PCI-DSS compliance, and (iii) assist You with your PCI-DSS compliance obligations and to mitigate any issues that may arise from Your non-compliance.

10. **Data Security and Cybercrime Prevention.** It is Your responsibility to have and maintain in place malware protection software and security for all of Your systems and data, which security includes properly configured hardware firewalls, unique, strong passwords per user, physical security, and access control policies. You acknowledge that the security and protection of Your network and the data and applications on that network, including protections against unauthorized access, is solely and entirely Your responsibility. A properly configured firewall is required for each site using a persistent connection to the public Internet or any private network where there is a potential for unauthorized access. You acknowledge that, to be effective, malware protection software, hardware firewalls, system passwords and other security software and hardware components require periodic and routine updates, which You must obtain or perform as applicable. Radiant and its authorized resellers disclaim any warranty, express or implied, that the Software or Your data will remain malware-free. You acknowledge that Your failure to discharge Your obligations to keep Your systems secure may result in investigation fees, fines, penalties, charge backs and credit card fraud costs, and other losses as levied by credit card processors and others, remediation costs (which may include system component updates or replacements) and lost profits and lost reputability of your business, which costs may be so large that they may threaten the survival of Your business. You waive any claims hereunder against Radiant and its authorized resellers for any such costs or losses to the extent arising from Your failure to have or maintain a secure system, or to the extent arising as a result of a failure or breach of Your security for Your systems or data, or as a result of any unauthorized access to Your systems. In the event of a security breach of Your systems, You agree to promptly (i) notify Radiant of such breach, (ii) provide Radiant with copies of any forensic reports related to such breach, and (iii) authorize any investigating entities to disclose all relevant information regarding their investigations, including investigations in progress, of such breach to Radiant.

11. **Conditions Beyond Radiant's Control.** Radiant and its authorized resellers shall not be held responsible for misuse or incorrect operation of the Software, use of the Software by untrained personnel, improper entry of data in connection with the Software, or modification of settings or other behavior affecting data security. You understand that the use of any equipment outside the manufacturer's recommended specifications may seriously affect the performance of the Software. **RADIANT AND ITS AUTHORIZED RESELLERS SHALL NOT BE HELD LIABLE OR RESPONSIBLE FOR CONDITIONS BEYOND THEIR CONTROL THAT MAY AFFECT THE PERFORMANCE OR ACCESSIBILITY OF THE SOFTWARE OR THE DATA CONTAINED THEREIN, INCLUDING, BUT NOT LIMITED TO, LOSS OR INTERRUPTION OF POWER, YOUR OPERATING ENVIRONMENT FACTORS, PROGRAM VIRUSES AND MALWARE, INTERNET SERVICE DISRUPTIONS, ENVIRONMENTAL CONDITIONS AND OTHER NATURAL EVENTS (INCLUDING FORCE MAJEURE EVENTS AS DESCRIBED IN SECTION 14 BELOW), AND UNAUTHORIZED ACCESS OR DATA SECURITY BREACHES.**

12. **Your Additional Responsibilities.** Unless otherwise specified in this Agreement or in a separate writing signed by both You and Radiant, You shall also be solely responsible for the following: (a) selection of the Software to achieve Your intended results; (b) evaluation of Radiant's products relating to Your specific business requirements and technical environment; (c) the results obtained from use and operation of the Software; (d) providing and maintaining the appropriate operating environment for the Software, including related security and access controls, and maintaining back-up and disaster recovery procedures, facilities and equipment (if applicable); (e) adherence to any applicable electronic payment processing standards or requirements related to Your operations; (f) all data entry and loading (g) securely deleting previously stored information or data; (h) the content of all of Your information or data, the selection and implementation of controls on the access and use of such information or data, and the protection and back-up of the stored information or data; (i) the configuration of all required data parameters associated with use of the Software and its operating environment, including security-related parameters; (j) compliance with all applicable laws, rules or regulations affecting or governing Your information or data configuration parameters in the Software; and (k) providing adequate training on the use and operation of the Software to Your employees and maintaining adequate supervision of such employees.

13. **Non-Payment.** Failure by You to timely pay applicable fees due Radiant or its authorized resellers shall entitle Radiant immediately to suspend, disable and/or discontinue (by remote means or such other means then available to Radiant), without



necessity of notice to You. Your licenses and rights of access to and use of any Software and/or services provided by Radiant, and any such suspension, disablement or discontinuation shall remain in effect until such time as the applicable unpaid fees are paid in full and Radiant notifies You that such suspension, disablement or discontinuation has been lifted, which Radiant may lift or not in its sole discretion.

14. **Force Majeure.** Other than for non-payment of monies payable hereunder, neither party will be liable for any default or delay in the performance of its obligations hereunder: (i) if and to the extent that such default or delay arises out of causes beyond its control, including default or delays of the other party, acts of God, acts of war, acts of governmental authority, acts of public enemy, insurrection, earthquakes, fires, cable cuts, floods, terrorism, and riots (each, a "Force Majeure Event") and (ii) provided such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternative sources, work-around plans or other means. Upon the occurrence of a Force Majeure Event, each party shall be excused from further performance or observance of the obligation(s) affected so long as such circumstances caused by the Force Majeure Event prevail and the parties use their reasonable efforts to promptly recommence performance or observance of said obligation(s). The party claiming excuse by Force Majeure so affected in its performance will immediately notify the other by telephone (to be confirmed in writing within 5 days of the inception of the Force Majeure Event) and describe at a reasonable level of detail the Force Majeure Event.

15. **Dispute Resolution.**

15.1 The parties shall make diligent efforts through good faith negotiations to settle any disputes arising out of or related to this Agreement, including escalating the issues to their respective upper management levels. If any controversy or claim arising out of or relating to this Agreement, or the breach thereof, is not able to be settled by such negotiations within 30 days after either party first requests in writing that such negotiations be undertaken, then either party may thereafter request in writing that such matter be settled by final and binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Unless otherwise agreed in writing between You and Radiant, the arbitration shall take place in or about Atlanta, Georgia and before a single arbitrator. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall apply Georgia law, without regard to its rules of conflict of law. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this Agreement and without any abridgment of the powers of the arbitrator(s).

15.2 Notwithstanding anything to the contrary in Section 15.1, (i) actions seeking to validate Radiant's rights to its proprietary information, (ii) actions to enjoin Your unauthorized use of the Software in violation of this Agreement or Radiant's other intellectual property rights, or (iii) actions to collect any sums owed to Radiant or its authorized resellers under this Agreement, may, at Radiant's discretion, either be submitted to arbitration under Section 15.1 above or be the subject matter of litigation instituted by Radiant in Atlanta, Georgia. You expressly agree to submit to the jurisdiction and venue of those courts for purposes of such litigation. You hereby waive and covenant not to assert any claim that You are not subject to personal jurisdiction in those courts or that venue in those courts is for any reason improper, inconvenient, prejudicial or otherwise inappropriate (including, without limitation, any claim under the judicial doctrine of forum non conveniens).

16. **Governing Law.** This Agreement shall be constructed and governed in accordance with the laws of the State of Georgia without regard to its rules regarding conflicts of law.

17. **Costs of Litigation or Arbitration.** If any action is brought by either party to this Agreement against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorneys fees and expenses of litigation or arbitration, as applicable.

18. **Severability.** Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms hereof.

19. **No Waiver.** The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

20. **General.** The Software is provided with "Restricted Rights". Use, duplication or disclosure by the U.S. Government is subject to the restrictions set forth in 48 CFR 52.227-10(c)(1) and (2) or DFARS 252.227-7013(c)(1)(ii) or applicable successor provisions. The manufacturer is Radiant. You are required to observe the relevant U.S. Export Administration Regulations and may not re-export the Software in violation of these or other applicable export laws or regulations.

21. **Amendments.** Any amendments to this Agreement must be in writing and signed by an authorized officer of Radiant.

22. **Entire Agreement.** This Agreement represents the complete and exclusive statement of the agreement between the You and Radiant, superseding all proposals or prior agreements, oral or written, and all other communications between the You and Radiant relating to the subject matter of this Agreement, provided, however, that if You and Radiant have signed by hand a separate written agreement concerning the Software, the terms and conditions of the signed by hand separate written agreement shall govern and this Agreement shall not apply. This Agreement may be updated by Radiant from time to time, and such updated Agreement shall be effective as of the date of Your acceptance of such updated Agreement, as evidenced by Your clicking "I ACCEPT" or "I AGREE" to such updated Agreement, or Your use of the Software after receiving such updated Agreement.

