

## **Armagh POS Solutions Online Backup Merchant Agreement (v1)**

This Agreement is being made by and between Armagh Cash Register Limited (dba Armagh POS Solutions) ("Armagh"), an Ontario corporation with its principal address at 180 Dundurn Street South, Hamilton, Ontario, L8P 4K3 and \_\_\_\_\_ ("Merchant") (together, Armagh and Merchant are the "Parties") with its principal place of business at \_\_\_\_\_. The Agreement shall become effective on the initial date that the Online Backup for the Merchant is set up by Armagh (the "Effective Date").

### **RECITALS**

- A. WHEREAS, Armagh is in the business of providing Point of Sale and Retail Management software and services;
- B. WHEREAS, Merchant has the need and responsibility to backup data from Point of Sale and Retail Management software; and
- C. WHEREAS, Armagh and Merchant desire to set forth the terms and conditions under which Merchant shall sign up for the Armagh Online Backup Service.

### **ADDENDUM TO MASTER AGREEMENT**

This Online Backup End User Agreement (the "Addendum") is an addendum to and forms part of the Master Agreement (the "Master Agreement") entered into between Armagh and End User, which governs the overall relationship and any purchases made by End User from Armagh. In the event of any conflict between the terms of this Addendum and the Master Agreement, the terms of this Addendum shall prevail with respect to the Online Backup Service described herein. All other terms of the Master Agreement remain in full force and effect and are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

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## TERMS AND CONDITIONS

### 1. INCORPORATION OF RECITALS

The above Recitals are incorporated into the Terms and Conditions as if set forth fully herein.

### 2. TERM

The term of this Agreement shall commence on the Effective Date (as defined above), and shall continue for a period of one (1) year from the Effective Date (the "Initial Term"). This Agreement, including all of its terms and conditions, shall automatically renew for successive one (1) month terms (the "Renewal Terms") indefinitely on a month-to-month basis unless either party provides the other party with written notice of its intention to terminate this Agreement at least thirty (30) days prior to the end of the Initial Term or any Renewal Term. Notwithstanding anything in this Agreement to the contrary, either party may terminate this Agreement without notice at any time for "cause" as set forth in Section 10 below.

### 3. BILLING

Armagh shall bill Merchant on a monthly basis beginning on the first day of the next calendar month following the Effective Date and on the first day of each successive month. Merchant will be billed CAD \$49.99 per month for the Service.

Merchant shall complete and file an "ACH" form with Armagh to provide for automatic monthly payments of its invoices. All invoices are due upon receipt. Any payment not made within 30 days of receipt shall be considered late. If payment is not made, Armagh retains the right to suspend Merchant's Services (as defined below) under this Agreement, terminate the Agreement "for cause" pursuant to Section 10 below, and/or charge applicable late fees.

Merchant acknowledges the Services (as defined below) provided under this Agreement and pricing are subject to change periodically, as determined by Armagh in its sole discretion. A change in Service may include, but is not limited to, changes in system requirements, restrictions, limitations, or bandwidth requirements. Armagh will notify Merchant of any change in Service by posting sixty (60) days before the change goes into effect. All changes shall become effective automatically on the expiration of sixty (60) days unless the Merchant first terminates the Agreement per its terms.

## 4. SERVICES

### 4.1 Monthly Services

The "Service" provided in this Agreement includes online backup services, powered by Acronis, a third-party provider of backup technology and cloud storage, as set up and managed by Armagh for the Merchant in its initial and any subsequent orders. Armagh utilizes Acronis' technology and cloud infrastructure to facilitate the backup and storage of Merchant's data.

### 4.2 Support

Armagh shall provide support to Merchant for the Service only while its account(s) with Armagh is (are) in good standing. If the Merchant does not have an existing Armagh Support Contract, Armagh will only support the Armagh Online Backup Service for the Merchant. Support for other products and services will be billable at standard rates.

## 5. RELATIONSHIP OF THE PARTIES

The parties hereto acknowledge and agree that Merchant is the owner of the data subject to the Service under this Agreement. Merchant shall have the sole responsibility to provide and maintain the infrastructure required to connect to and interface with the Service. Neither party hereto shall have any authority, whether express or implied, to assume, create, or incur any obligation or liability whatsoever on behalf of, or in the name of, the other party in any manner.

## 6. INDEMNIFICATION

The Merchant shall and does hereby fully indemnify, defend, and hold harmless Armagh, its respective successors, assigns, officers, directors, employees, and agents, their heirs, administrators, and executors (collectively, the "Indemnified Parties") from any and all claims, demands, causes of action, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees and costs) arising out of or related to Merchant's use of the Service, the data backed up under the Service, or any breach by Merchant of this Agreement.

## 7. FORCE MAJEURE

Neither party shall be liable under this Agreement for delays, failures to perform, damages, losses, or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, wind, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures or outages, explosions, civil disturbances, governmental actions, shortages or equipment or supplies, computer hacking, computer viruses, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control.

## 8. LIMITATION OF LIABILITY

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. ARMAGH'S LIABILITY SHALL BE LIMITED AS SET FORTH IN THE SENTENCE IMMEDIATELY FOLLOWING, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. ARMAGH'S SOLE AND TOTAL LIABILITY TO MERCHANT AND MERCHANT'S SOLE AND TOTAL LIABILITY TO ARMAGH, FOR ANY AND ALL CLAIMS, DEMANDS, OR CAUSES OF ACTION, AND INDEMNITIES AND ANY WORK PRODUCT PROVIDED BY ARMAGH, OR RESULTING FROM THE PERFORMANCE OR BREACH BY ARMAGH OF ITS OBLIGATIONS UNDER THIS AGREEMENT, SHALL IN NO CASE CUMULATIVELY EXCEED THE FEE ACTUALLY PAID BY MERCHANT TO AND RECEIVED BY ARMAGH FOR THE MONTH PRIOR TO THE DATE THAT MERCHANT PROVIDED WRITTEN NOTICE TO ARMAGH OF SUCH BREACH OR LOSS OR \$250.00, WHICHEVER IS GREATER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ARMAGH SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES), DAMAGE (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL DAMAGES, INDIRECT, INCIDENTAL AND SPECIAL DAMAGES), COST (INCLUDING, WITHOUT LIMITATION, COURT AND EXPERT WITNESS COSTS AND ATTORNEYS' FEES), EXPENSE OR LIABILITY SUFFERED OR INCURRED BY MERCHANT ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, DAMAGES RELATED AS A RESULT OF ANY TEMPORARY OR PERMANENT FAILURE OF AVAILABILITY OR PERFORMANCE OF SERVICES, ANY

DELIVERABLE MATERIALS AND ANY WORK PRODUCT PROVIDED BY ARMAGH. THE PROVISIONS OF THIS AGREEMENT TOTALLY ALLOCATE THE RISKS BETWEEN ARMAGH AND MERCHANT. ARMAGH'S RATES REFLECT THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS OF DAMAGES SET FORTH IN THIS AGREEMENT BE EXCLUSIVE AND THAT THE LIABILITY OF ARMAGH TO THE MERCHANT FOR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARMAGH MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, WRITTEN, OR ORAL, STATUTORY (EITHER IN FACT OR BY OPERATION OF LAW), OR OTHERWISE, WITH RESPECT TO THE SERVICES, ANY DELIVERABLE MATERIALS AND ANY WORK PRODUCT. ARMAGH DOES NOT WARRANT THAT THE SERVICES, ANY DELIVERABLE MATERIALS AND ANY WORK PRODUCT PROVIDED BY ARMAGH WILL MEET MERCHANT'S REQUIREMENTS, OR THAT THE OPERATION OF THE SERVICES, ANY DELIVERABLE MATERIALS AND ANY WORK PRODUCT PROVIDED BY ARMAGH WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SERVICES, ANY DELIVERABLE MATERIALS AND ANY WORK PRODUCT PROVIDED BY ARMAGH WILL BE CORRECTED, OR THAT ENCRYPTION ALGORITHMS, ASSOCIATED KEYS AND OTHER SECURITY MEASURES WILL BE SECURE OR EFFECTIVE.

## 9. DATA PROTECTION

Armagh shall implement reasonable technical and organizational measures to protect Merchant's data against unauthorized access, loss, or disclosure, in compliance with applicable data protection laws, including but not limited to the Personal Information Protection and Electronic Documents Act (PIPEDA). Merchant acknowledges that it is responsible for ensuring that any personal data backed up under the Service complies with applicable laws. Armagh shall not process Merchant data for any purpose other than providing the Service unless expressly authorized by Merchant. In the event of a data breach affecting Merchant's data, Armagh shall notify Merchant promptly and cooperate in any required investigations or notifications.

## 10. DATA RETENTION

Armagh will retain End User's backed-up data only for as long as necessary to provide the Service and fulfill the purposes outlined in this Agreement, in compliance with applicable laws including PIPEDA. Data is stored in secure data centers located in Canada to ensure protection under Canadian privacy laws.

- **Active Service Retention:** Backed-up data will be retained according to the retention rules configured in the backup plan set up by Armagh (using Acronis technology). Default retention included is 45 days. End User may request adjustments to these settings, subject to feasibility and any additional fees. Retention periods are designed to balance data availability with storage efficiency and will not exceed what is necessary for backup and recovery purposes.
- **Post-Termination Retention:** Upon termination or expiration of this Agreement, all backed-up data will be securely deleted immediately, as detailed in Section 12, unless End User requests a data copy in advance. No data will be retained "just in case" or for indefinite periods.
- **Review and Compliance:** Armagh reserves the right to review and adjust retention settings to comply with legal requirements or Acronis policies. End User is responsible for ensuring their data retention needs align with applicable laws and for notifying Armagh of any specific requirements.

## 11. TERMINATION FOR CAUSE

Either party may terminate this Agreement for cause upon the occurrence of any of the following: (i) material breach of this Agreement by the other party which is not cured within thirty (30) days after written notice; (ii) insolvency of the other party; (iii) assignment for the benefit of creditors; (iv) voluntary or involuntary petition in bankruptcy by or against Armagh or Merchant, or the appointment of a receiver; (v) the nonpayment by Merchant of any invoice; and (vi) any other reason recognized as cause under applicable law.

## 12. ASSIGNABILITY

Neither party may assign or transfer its rights or obligations under this Agreement without the other party's written consent, which consent may not be unreasonably withheld, except that either party, upon thirty (30) days' notice to the other party, may assign the Agreement to its parent, successor in interest, affiliate, or subsidiary without

the other party's consent. Any assignment or transfer without the required consent is void.

### 13. DISPOSITION OF DATA ON TERMINATION

Merchant understands and agrees that all data subject to the Services under this Agreement shall be deleted immediately and shall no longer be retrievable or accessible by Armagh or Merchant upon termination of this Agreement. If Merchant desires to obtain a copy of its stored data ("Data"), Merchant shall notify Armagh in writing of its desire to have a data copy made no later than thirty (30) days before termination of the Agreement. Merchant shall be responsible for all fees and expenses associated with obtaining a data copy from Armagh. If Armagh does not receive a written request for a data copy as set forth herein, Merchant acknowledges and understands that Armagh will cause all of Merchant's data files to be destroyed immediately upon termination without any liability to Armagh whatsoever.

### 14. NOTICES

All notices required to be provided under this Agreement shall be in writing and shall be deemed to have been given or made when sent by email and mail to the following addresses and in the manner provided below:

If to Armagh, by email and mail to:

Armagh POS Solutions

c/o Accounting

Accounting@armaghpos.com

180 Dundurn Street South

Hamilton, Ontario, L8P 4K3

If to Merchant, by electronic mail to the email address of the then-current Merchant as indicated on-file in Armagh's support and management system.

## 15. AMENDMENTS, ENTIRE AGREEMENT, MERGER

This Agreement shall not be subject to amendment except by written agreement of the parties. This Agreement represents the entire and sole agreement of the parties with respect to its subject matter. The parties represent that no promise or inducement has been offered other than those expressly set forth herein. This Agreement is executed without reliance upon any statement or representation of any person or party, or their representatives.

## 16. ATTORNEY'S FEES

In any action between the Parties concerning the collection of any portion of any invoice or indebtedness arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

## 17. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada, without regard to its conflict of law principles. Any disputes arising under this Agreement shall be resolved through good-faith negotiation. If negotiation fails, the parties agree to submit the dispute to binding arbitration in Hamilton, Ontario, under the rules of the Canadian Arbitration Association, with each party bearing its own costs unless otherwise determined by the arbitrator.

## 18. SEVERABILITY

If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect, and the invalid provision shall be modified to the extent necessary to make it enforceable while preserving the parties' intent.

## 19. CONFIDENTIALITY

Each party agrees to maintain the confidentiality of any proprietary or confidential information disclosed by the other party during the Term of this Agreement and for a period of three (3) years thereafter, except as required by law or with the disclosing party's prior written consent.



(Signature lines to follow on next page)

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto.

Armagh Cash Register Limited (dba Armagh POS Solutions)

Per: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Merchant Legal Name : \_\_\_\_\_

Per: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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