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NEWTEK PAYMENT SYSTEMS POINT OF SALE SYSTEM**

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BEFORE ACCESSING, VIEWING,
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7. OFFLINE OPERATION. The POS System may be configured to operate in an offline mode (“**Offline Mode**”), so that terminals may continue to process credit cards, loyalty cards and other remote server-based transactions even if the connection to the Internet or to the payment processor is temporarily discontinued (“**Offline Transactions**”). This is an advanced feature of the POS System that enables Licensee’s business to continue to operate in an offline mode. While in Offline Mode, Offline Transactions are processed locally, without receiving a final confirmation from a remote server that the

respective transactions were in fact completed. Consequently, with Offline Transactions, Licensee assumes the risk that when the POS System reestablishes a connection to the remote servers, at least some of the Offline Transactions may be declined. For example, Licensee assumes the risk and will be solely responsible if credit card transactions processed offline are not approved if the credit cards are declined by a payment processor or financial institution when the connection with the remote servers is reestablished. Consequently, to avoid or limit potential losses for Licensee, Licensee agrees to verify that the POS System is properly configured to process credit cards and other transactions that require remote server responses, including by verifying at least once a day (and more often if reasonably prudent under the circumstances) that there is a stable connection and that the POS System is not in Offline Mode. Licensee shall train and instruct its personnel to verify multiple times each day that the POS System is not operating inadvertently in Offline Mode, that the connection to the payment processor is and remains properly configured, and that any Offline Transactions are accurately processed when the connection to the remote servers is reestablished. UNDER NO CIRCUMSTANCES WILL LICENSOR, ANY OF ITS AFFILIATES OR ANY OF LICENSOR'S OR ANY OF ITS AFFILIATES' VENDORS, PROVIDERS, RESELLERS, SUPPLIERS OR AGENTS BE RESPONSIBLE FOR ANY DAMAGE, LOSS, OR INJURY RESULTING FROM USING THE POS SYSTEM IN AN OFFLINE MODE OR ACCEPTING OR PROCESSING OFFLINE TRANSACTIONS, INCLUDING ANY LOSSES ARISING FROM DECLINED DEBIT CARDS OR CREDIT CARDS, AND DENIED TRANSACTIONS

8. LOGIN CREDENTIALS. Licensee is solely responsible for safeguarding all login credential (including usernames and password) used by it (including its employees, contractors and other persons authorized by it) to access the **POS System** and for restricting access to the **POS System** from unauthorized users. Licensee is solely responsible for any use of the **POS System**, including any transactions processed through it, which was accessed through its login credentials, including those of its employees and contractors, or which was accessed through Licensee's equipment, and neither Licensor nor any of its authorized resellers or agents shall have absolutely any liability with respect thereto. Licensee will immediately notify Licensor of any unauthorized use of Licensee's login credentials, any unauthorized access of the **POS System** through Licensee Equipment or any other breach of security.

9. CONFIDENTIALITY. Licensee understands that the **POS System** contains confidential, proprietary or trade secret information of Licensor and/or its suppliers (collectively, "**Confidential Information**"), and shall be maintained by Licensee in the strictest confidentiality. Licensee agrees that it shall:

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(B) use all precautions to protect the Confidential Information against unauthorized use, dissemination, publication or disclosure;

(C) limit the use, circulation of and access to Confidential Information to Licensee's directors, officers and employees who have a need to know the Confidential Information in connection with the Purpose, are under binding obligations of confidentiality to maintain the confidentiality of the Confidential Information on terms at least as restrictive as those set forth in this EULA, and have been notified that such information is Confidential Information to be used solely for the Purpose, and Licensee shall be held liable if such persons do not adhere to such requirements;

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If Licensee is procuring the POS System directly from Licensor:

Unless otherwise agreed to in writing by Licensor (including via an order form or similar document), payments shall be made to Licensor by Automated Clearing House in U.S. dollars. Payment is due upon initial order and as set forth in the applicable order form (if not specified in the order form, (a) monthly fees are payable in advance on the first day of the month to which the fee relates, and (b) monthly transactional fees, if any, are payable on the first day of the month following the month in which they were incurred). On the applicable billing cycle date, payment shall be automatically ACH debited from the account Licensee has on file with Licensor, or if approved for payment by credit card, charged to the credit card Licensee has on file with Licensor. Payment by check must be approved by Licensor in writing on an order form specifying the dates on which payments are due and payable. If a payment is declined or fails, Licensee's rights under this EULA will be immediately suspended until the issue is resolved. Licensee is responsible for providing proper and correct billing, payment and contact

information. ACH rejects or chargebacks for payments hereunder will result in a \$25 fee and immediate suspension of Licensee's rights under this EULA.

If Licensee procured the POS System through an authorized reseller:

Unless otherwise instructed by the reseller, all payments for the POS Systems should be paid directly to the reseller and in accordance with the reseller's instructions for the payment thereof.

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