**SCREENCONNECT SOFTWARE LICENSE AND SUPPORT AGREEMENT**

This SCREENCONNECT SOFTWARE LICENSE AND SUPPORT AGREEMENT (“Agreement”) is entered into as of Click here to enter a date. (“Effective Date”) by and between Click here to enter text., a Click here to enter text. (“User”) and Kahala Management, L.L.C., an Arizona limited liability company (“Kahala”). User and Kahala may also be referred to in this Agreement individually as a “party” or collectively as the “parties.”

Recitals

1. User owns or leases a Point of Sale System (“System”) used in the operation of the business known as Click here to enter text. , located at Click here to enter text. (“Covered Location”).

1. User desires to access and to allow Kahala to access its System via remote support software.
2. Kahala has entered into a software license to host and sublicense the Screen Connect® remote support software (“Software”) to similar users across the country.
3. User is interested in receiving a sublicense and support from Kahala for the Software at the Covered Location, and Kahala hereby consents to provide such sublicense and support according to the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises, covenants, conditions and terms set forth in this Agreement, the parties agree as follows:

Agreement

1. Term. The initial term of this Agreement will be for twelve (12) months commencing on the Effective Date (“Initial Term”) and will automatically renew on each anniversary of the Effective Date for additional subsequent twelve (12) month terms (each a “Renewal Term”), unless earlier terminated pursuant to the terms of this Agreement. The Initial Term and any and all Renewal Term(s) will collectively be referred to as the “Term.”
2. Sublicense. Kahala hereby grants to User a revocable, limited, non-transferable, non-sub licensable right and license to use Click here to enter text.(Click here to enter text.) seat(s) of the Software solely at the Covered Location.
3. No Other Rights Granted. Apart from the rights granted to User in this Agreement, this Agreement does not convey any:
4. ownership right, title, interest, security interest, or other interest in the Software, corresponding documentation, source code or object Code of the Software;
5. intellectual property rights relating to the Software, any copy of any part of the Software or corresponding documentation;
6. right or authority to modify the Software;
7. right to develop derivative works of the Software or to use, display or exercise any other right of the owner of the intellectual property rights in the Software, including, without limitation, the corresponding documentation, other than as set forth in this Agreement;
8. right to reverse engineer, decompile, reconfigure or recompile the Software;
9. right to remove, modify or obscure any copyright, trademark, or other proprietary right notices contained in or on the Software or corresponding documentation;
10. right or authority to separate the components of the Software by installing them on different computers;
11. right to copy or install the Software or any additional seat of the Software, including, without limitation, the corresponding documentation, without Kahala’s prior written consent; or
12. Right to install, uninstall or move any licensed seat of the Software to any location without Kahala’s prior written consent.
13. Software Support. Kahala will provide to User, via telephone only, reasonable technical support for the Software at the Covered Location (“Telephone Support”). Kahala will be available to provide User with Telephone Support every day of the week from 7:00 A.M. to 10:00 P.M. (Mountain Standard Time), excluding major holidays; provided, however, Telephone Support on the weekends and after 5:00 P.M. on weekdays will be performed by a limited staff, and therefore support times may be longer. Telephone Support does not include the following:
    * 1. Instruction and training on the Software.
      2. Issues dealing with cabling, connections and the Internet.
      3. Software backup.
      4. Any issue that requires on-site repair at the Covered Location.
      5. Any issue with the Software, or any part of the Software, if the Software is relocated or reinstalled during the Term without Kahala’s prior written consent.
14. Fee; Payment.
    1. In consideration for the Software sublicense and support provided by Kahala under this Agreement, User will pay Kahala a non-refundable, fully-earned and paid-up annual license fee of Fifty and NO/100 Dollars ($50.00) per twelve (12) month period during the Term. Payment for the first twelve (12) months’ sublicense and support will be due concurrent with User’s execution of this Agreement. Each annual payment thereafter is due on or before the anniversary of the Effective Date of this Agreement in advance of the twelve (12) month period for which the sublicense and support is to be provided. All payments will be made via ACH using the electronic funds transfer form attached hereto and executed concurrently with this Agreement, as may be updated by User from time to time as necessary to reflect User’s then-current account information. Kahala will automatically debit each annual sublicense and support fee, unless this Agreement is timely terminated in accordance with Section 7 below. Kahala has the right, in its sole discretion, no more than once per calendar year and upon sixty (60) days prior written notice to User, to adjust the sublicense and support fee and terms of this Agreement.
    2. User understands and agrees that any fees not paid in full by their due date will incur a late charge of one and one-half percent (1.5%) per month until paid in full. If an ACH transaction is rejected, in whole or in part, due to insufficient funds, User will be charged a processing fee of Twenty-Five and NO/100 Dollars ($25.00), in addition to interest charges and any unpaid support fees. Kahala may suspend User’s right and license to use the Software and support without notice to User for any period sublicense and support fees are past due. If User fails to timely pay amounts due within ninety (90) days from the date such amounts are due, Kahala, in its sole discretion, may immediately terminate this Agreement upon written notice to User.
15. Representations and Warranties. In order for Kahala to provide User with adequate support, User represents and warrants to Kahala that User will:
    1. Maintain a working DSL connection, or modem with a telephone line, at the Covered Location to accommodate Kahala’s on-line access to the System.
    2. Perform regular backups to the Software, as recommended.
    3. Restore the System’s equipment to proper operations, when necessary.
    4. Comply with and perform its obligations under this Agreement with all reasonable skill, care and attention using appropriately skilled personnel.
    5. Employ at least one (1) representative who is proficient and fully trained in the operation and maintenance of the Software (“Key Operator”). The Key Operator will effectively operate the Software and maintain communications with Kahala, as necessary. User is solely responsible for hiring and training the Key Operator.
    6. Comply with all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the Software, including, without limitation, the U.S. Export Administration Regulations (“EAR”), as well as importation, manufacturing, end use, end-use, and destination restrictions issued by the U.S. and other governments. User understands that Kahala is subject to U.S. export jurisdiction and regulation by agencies of the U.S. government, including the U.S. Department of Commerce (“DOC”), which prohibits export or diversion of certain technical products to certain countries. User warrants that it will comply in all respects with the export and re-export restrictions applicable to the Software. Additionally, User warrants that it will not export, or re-export, directly or indirectly, any product to any country outline in the EAR, nor to any person or entity on the DOC Denied Persons, Entities and Unverified Lists, the U.S. Department of State’s Debarred List, or on the U.S. Department of Treasury’s lists of Specially Designate Nationals, Specially Designated Narcotics Traffickers, or Specially Designated Terrorists. Furthermore, USER agrees not to export, or re-export, the Software to any military entity not approved under the EAR, or to any other entity for any military purpose, nor will User sell any of the Software for use in connection with chemical, biological, or nuclear weapons or missiles capable of delivering such weapons.
    7. Take all reasonable precautions to protect the intellectual property and other proprietary rights in the Software. User’s use of the Software is only to be used in accordance with the terms of the End User License Agreement attached to this Agreement as Exhibit 1 and incorporated herein by reference. User will promptly report any misuse of the Software to Kahala.
    8. Promptly report to Kahala all errors and interoperability issues concerning the Software that User encounters.
16. Taxes. User will be solely responsible for all tax returns and payments required to be filed with, or made to, any federal, state or local tax authority with respect to the Software and support, except for Kahala’s income tax arising from amounts paid under this Agreement.
17. Termination.
    1. Conditions for Termination.In addition to Kahala’s termination rights set forth in Section 4(b) above, either party may terminate this Agreement at the end of the then-current Term upon sixty (60) days prior written notice to the other party. Additionally, Kahala may suspend or terminate this Agreement at any time upon notice to User if Kahala’s license to host or use the Software is suspended or terminated by the Software owner for any reason.
    2. Effect of Termination.Termination for any reason will result in discontinuation of all rights relating to the use of the Software and support granted to User under this Agreement without further notice, free and clear of any claims by User. Upon termination, User shall: (a) immediately discontinue its access to and use of the Software and corresponding documentation; (b) return to Kahala or certify destruction of all media containing Confidential Information (as defined in Section 10.d), below) relating to the Software and corresponding documentation; and (c) pay all outstanding fees due to Kahala under this Agreement.
18. No Warranty; Limitation of Liability. THE SOFTWARE AND SUPPORT IS PROVIDED WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, WHETHER EXPRESS OR IMPLIED AND INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND KAHALA EXPRESSLY DISCLAIMS THAT THE SOFTWARE AND SUPPORT WILL BE ERROR FREE OR RESOLVE USER’S ISSUES. IN NO EVENT WILL KAHALA, OR ANY OF ITS EMPLOYEES, AFFILIATES OR SUBSIDIARIES, BE LIABLE FOR ANY INDIRECT, OR INCIDENTAL DAMAGE TO THE SYSTEM. USER AGREES THAT KAHALA’S LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE ACTUAL AMOUNT PAID TO KAHALA BY USER UNDER THIS AGREEMENT FOR THE TWELVE MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE. IN NO EVENT WILL KAHALA BE LIABLE TO USER OR ANY OTHER PERSON FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM THIS AGREEMENT, THE SOFTWARE AND ANY SERVICES PROVIDED HEREUNDER, EVEN IF KAHALA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. KAHALA NEITHER ASSUMES NOR AUTHORIZES ANY PERSON OR ENTITY TO ASSUME FOR KAHALA ANY LIABILITY OR OBLIGATION NOT SPECIFICALLY SET FORTH HEREIN.
19. Indemnification. User will indemnify, defend and hold Kahala and its parent, subsidiaries, affiliates, shareholders, directors, officers, members, managers, partners, owners, employees, agents, licensors, successors and assigns harmless for, from and against any and all actions, lawsuits, claims, demands, threats, losses, damages, liabilities, judgments, obligations, injunctive relief, proceedings, fines, penalties, taxes or other expenses, including, without limitation, attorneys’ fees, expert witness fees and costs arising from or in connection with User’s use of the Software, corresponding documentation or support pursuant to this Agreement.
20. Miscellaneous.
    1. Waiver. Failure by either party to complain of any act or failure to act of the other party, or to declare the other party in default, irrespective of how long the failure continues, will not constitute a waiver by that party of its rights under this Agreement. Any waiver by any party of any default will not affect or impair any right arising from any other or subsequent default.
    2. Assignment. Any attempt by User to assign this Agreement, or any of its rights hereunder, or to delegate its obligations hereunder without obtaining Kahala’s prior written consent will be void. Kahala may assign this Agreement or any of its rights hereunder, or delegate any of its obligations hereunder without the consent of any party, or any other person. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective assigns, legal representatives, executors, heirs and successors.
    3. No Rights Granted. Apart from the rights granted in this Agreement, this Agreement does not convey any:
       1. ownership, right, title, interest, security interest, or other interest in the Software;
       2. intellectual property rights relating to the Software;
       3. right or authority to modify the Software;
       4. right to use the Software to develop derivatives or derivative works of the Software;
       5. right to reverse engineer, decompile or recompile the Software;
       6. Right to remove, modify or obscure any copyright, trademark, or other proprietary right notices contained in or on the Software; or
       7. Right to move, transfer, sublicense, or separate the components of, the Software, whether by installing the Software on other hardware or otherwise.
    4. Confidentiality. Any business and technical information provided by Kahala (“Disclosing Party”) to User (“Receiving Party”), including, without limitation, Kahala’s pricing structure, the Software, including, without limitation, the source code, object code and any interfaces and specifications, corresponding documentation, the terms of this Agreement and the fees paid by User, constitute the Disclosing Party’s and/or its licensor’s confidential and proprietary information (individually and collectively, “Confidential Information”). Protection of Confidential Information shall be maintained in strict confidence with the Receiving Party utilizing at least the same level of care as it would use for its own Confidential Information of like type, but no less than reasonable care as is standard in the industry or generally for similar information and shall not be disclosed to any third party, except: (a) as strictly necessary for the Receiving Party to perform its obligations or exercise its rights under this Agreement and for its business accounting, tax preparation, or tax reporting purposes; (b) if required by court order; provided that the Disclosing Party has, whenever possible, no less than thirty (30) days’ prior written notice of the request for Confidential Information (e.g., the subpoena, production request, interrogatory, or deposition notice); or (c) with the prior written permission of the Disclosing Party. This provision shall survive the termination of this Agreement.

Confidential Information subject to these provisions shall not include information that the Receiving Party can establish to the reasonable satisfaction of the Disclosing Party: (a) was known to the Receiving Party prior to disclosure hereunder without an obligation of confidentiality to any person; (b) was obtained by the Receiving Party from a third party having the right to disclose it without breach of any obligation to any person; (c) was or became generally available to the public without violation of this Agreement; (d) was disclosed with the written authorization of the Disclosing Party; or (e) was developed by the Receiving Party independent of any reference to the Confidential Information of the Receiving Party. Notwithstanding the foregoing, each party agrees to keep the specific terms and conditions of this Agreement in confidence.

* 1. Arbitration. *A*ny dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the parties hereto or the relationship between the parties, or the entry, making, interpretation, or performance of either party under this Agreement (“Dispute”) will be settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules as modified herein.

Any arbitration will take place before a sole arbitrator in Scottsdale, AZ or, if Kahala’s headquarters is no longer located in Scottsdale, AZ, then the arbitration will take place in the city which is Kahala’s principal place of business at the time the arbitration is commenced.  User agrees that conducting the arbitration where Kahala is located is appropriate due to the multiple locations throughout the United States where other users of the Software are located.  The parties agree that the arbitrator will be an attorney licensed to practice law in the United States and shall be chosen pursuant to the AAA rules*.*  Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.  The arbitrator will, in the award, allocate all of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys’ fees of the prevailing party, against the party who did not prevail.  To the extent permitted by applicable law, no issue of fact or law will be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the parties.  This agreement to arbitrate will survive any termination or expiration of this Agreement, however effected.  The parties agree that any arbitration will be solely between them (including any affiliates) and will not include as a party, by consolidation, joinder, or in any other manner, any other person or entity, unless both parties consent in writing.  Both parties will have the absolute right to refuse such consent.  Further, the parties expressly waive any right to bring and/or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not permissible under the AAA Commercial Arbitration Rules, including, but not limited to, any claim brought on their behalf by an association of which it, he or she is a member.  At the request of any party, the arbitration will be conducted in a manner that maintains the confidentiality of the proceedings.

The arbitrator will issue a reasoned award, with findings of fact and conclusions of law.  Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA’s Commercial Arbitration Rules.  The Federal Arbitration Act will govern, excluding all state arbitration laws.  Arizona law will govern all other issues.  With respect to discovery, the arbitrator will require each party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.

Prior to the commencement of an arbitration proceeding, the parties must first submit any Dispute to non-binding mediation.  At the request of any party, the mediation will be conducted in secrecy. The mediation will be conducted in metropolitan Phoenix, AZ unless the parties will mutually agree to a different location. The parties to the mediation will share equally in its cost and expenses, except those costs and expenses incurred separately by each party, including, without limitation, counsel fees and expenses.  The mediation process will be deemed “Completed” when the parties agree that it has been completed, the mediator declares that any impasse exists or sixty (60) days have elapsed since the date of the initiating party’s notice to the other party that it is initiating the mediation process, whichever occurs first.

Notwithstanding anything contained in this Agreement to the contrary, the above-mentioned provisions of this Section 10(e) do not apply to a Dispute where (i) Kahala brings an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to Kahala’s goodwill or other property or for fraudulent conduct by User; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unsafe conditions would continue to exist). For such disputes, Kahala may bring an action in any federal or state court having jurisdiction or seek to arbitrate any claim, whether for monetary damages and/or for temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to Kahala.  User hereby consents to and waives any objection or defense and agrees not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.

Disputes concerning the validity or scope of arbitration, including whether a dispute is subject to arbitration, are beyond the authority of the arbitrator and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. Ş1 et seq., as amended from time to time.

Either party may appeal the final award of the arbitrator to the appropriate U.S. District Court.  The Court’s review of the arbitrator’s findings of fact will be under the clearly erroneous standard, and the Court’s review of all legal rulings will be *de novo*.  If it should be determined that this provision for federal court review is not enforceable, then either party may appeal the arbitrator’s final award to a panel of three arbitrators chosen under AAA procedures, which will employ the same standards of review stated immediately above.

* 1. Entire Agreement. This Agreement contains the entire understanding and agreement of the parties with respect to the subject matter herein and supersedes all agreements between the parties, express, implied or statutory, whether written or oral, including, but not limited to, warranties of merchantability and fitness for particular purpose. No amendment, modification, renewal or waiver of any condition or provision of this Agreement will be effective unless made in writing and signed by both parties.
  2. Counterparts; Signatures. This Agreement may be executed in one or more counterparts, each of which are deemed to be an original copy of this Agreement and all of which, when taken together, are deemed to constitute one and the same agreement. Any signature required by this Agreement may be provided via a scanned image file, such as a .pdf, and transmitted via electronic mail and such signatures will be deemed an original for all purposes.
  3. Severability. If for any reason an arbitrator finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. If the unenforceable provision was a material term of this Agreement, Kahala will provide a substitute provision to replace the unenforceable provision consistent with then-current law and the parties’ original intent.
  4. Authorship. The terms of this Agreement have been fairly bargained for after careful consideration by the parties. Therefore, this Agreement will be enforced, interpreted and construed without regard to its authorship, and no inference will be drawn by the parties, or any third party, including any arbitrator(s) or court, by virtue of its authorship.
  5. Captions. Captions used throughout this Agreement are for convenience of reference only and will not be considered in any manner in the construction or interpretation hereof.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed and effective as of the Effective Date and the signatories of each party are authorized to execute this Agreement and bind their respective party to the obligations contained in this Agreement without further consent or approval of any kind.

**USER: KAHALA:**

Click here to enter text. Kahala Management, L.L.C., an Arizona

limited liability Company

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Click here to enter text. Name: Click here to enter text.

Title:Click here to enter text. Title: Click here to enter text.

EXHIBIT 1

(End User License Agreement)