SBS EPOS

Terms and Conditions

These terms and conditions ("Terms") apply to the sale, licence, maintenance and services (as applicable) provided by Stevens Business Systems Ltd (Company number: 04542276) t/a SBS EPOS (who shall herby be referred to as SBS EPOS) of Suite 1 Chatmohr Business Park, Crawley Hill, West Wellow, Hampshire, SO51 6AP of any computer hardware or software or other similar or associated items or materials. These Terms are divided into four parts; Sales, Support, Services and General. The General Terms apply to all contracts of SBS EPOS. The remaining terms apply depending upon the service to be provided by SBS EPOS.

PART 1 - SALE OF GOODS

The following terms and conditions in this Part 1 apply to the sale of Goods by SBS EPOS

1.1 **Formation of Contract**

1.1.1 SBS EPOS will sell and the Customer will buy the Goods in accordance with SBS EPOS's written Proposal (if accepted by the Customer) or the Customer's written order (if accepted by SBS EPOS) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by SBS EPOS unless SBS EPOS confirm this in writing.

1.2 **Accuracy of Order**

1.2.1 The Customer is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer.

1.3 **Software**

1.3.1 All software, whether supplied, installed or implemented is provided within the terms and conditions and licence of the software provider.

1.3.2 If the software comprised in the Goods is not owned by SBS EPOS then the Customer will be required to enter into an end-user licence agreement with the owner of the software concerned.

1.3.3 If any software has to any extent been written or developed by SBS EPOS then subject to clause 1.3.2 above, SBS EPOS hereby grants a non-exclusive, non-transferable licence for the use of such software by the Customer for the duration of this Contract and all copies of such software are the property of SBS EPOS and notwithstanding clause 1.5.1 no title or ownership thereof will be transferred to the Customer.

1.3.4 Where software has been written or developed by SBS EPOS for the Customer, the Customer acknowledges that such software may only be compatible with the current versions of other software and/or hardware and SBS EPOS provides no guarantee that it will be compatible with later versions of other software and/or hardware. For the avoidance of doubt, unless otherwise agreed between the parties in writing, SBS EPOS is under no obligation to supply the Customer with any updates or add-ons to the software.

1.4 **Delivery**

1.4.1 Delivery of the Goods will take place by SBS EPOS delivering the Goods to the place agreed in writing with the Customer.

1.4.2 Any dates and times quoted for delivery are estimates only and unless otherwise agreed in writing, delivery times are not of the essence of the contract. SBS EPOS will not be liable for any loss or damage (howsoever arising) to the Customer should SBS EPOS be unable to deliver the Goods within the quoted period.

1.4.3 SBS EPOS is entitled to make partial deliveries by instalments and these Terms will apply to each partial delivery.

1.4.4 If the Goods are to be delivered in instalments, each delivery will constitute a separate contract and failure by SBS EPOS to deliver any one or more instalments in accordance with these Terms will not entitle the Customer to treat the Contract as a whole as terminated.

1.5 **Transfer of Property and Risk**

1.5.1 Risk in respect of the Goods passes to the Customer at the time of delivery but the title in the Goods will not pass to the Customer until SBS EPOS has received payment in full of the price of the Goods and all other goods agreed to be sold or services to be provided by SBS EPOS to the Customer for which payment is then due.

1.5.2 Until title in the Goods has passed to the Customer, SBS EPOS will be entitled at any time to require the Customer to deliver up the Goods to SBS EPOS and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

1.5.3 Until title in the Goods has passed to the Customer, the Customer will hold the Goods as SBS EPOS's fiduciary agent and bailee, will not dispose of the Goods and will keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as SBS EPOS's property.

1.6 **Installation**

1.6.1 Where SBS EPOS's written Proposal for the sale of the Goods or the Customer's written order for the Goods (if accepted by SBS EPOS) specifies installation of the Goods or SBS EPOS otherwise undertakes any such installation then the Customer will complete all necessary works that may be required to receive the installation of the Goods including all necessary IT infrastructure and suitable electrical supply. If SBS EPOS is prevented or delayed from carrying out the installation through no fault of SBS EPOS then SBS EPOS is entitled to charge the Customer at SBS EPOS's then current prices for any additional works carried out by or on behalf of SBS EPOS to enable it to complete the installation and/or for compensation for any losses or costs incurred by SBS EPOS by reason of such delay.

1.7 Warranty

1.7.1 The Goods supplied hereunder are warranted to be free from defects in materials and workmanship for a period of 90 days from the date of delivery by SBS EPOS. The Customer must within the said period of 90 days notify SBS EPOS in writing of any such defects and permit SBS EPOS to inspect the Goods as required by SBS EPOS. If the Customer does not so notify then the Customer will not be entitled to reject the Goods and SBS EPOS will have no liability for such defect.

1.7.2 The above warranty only applies where the Goods have been properly used in accordance with the relevant manufacturer's specifications and any instructions by SBS EPOS and does not apply to any Goods that have been repaired or modified by anybody other than SBS EPOS.

1.7.3 If a valid claim is notified under clause 1.7.1 above then SBS EPOS may at its discretion repair or replace the Goods free of charge or refund the price of the Goods (or a proportionate part) in which case SBS EPOS will have no further liability to the Customer.

1.8 **Charges and Payment**

1.8.1 In respect of the sale of Goods:

1.8.1.1 Payment will be made by the Customer on the date(s) agreed in writing between the Customer and SBS EPOS at the point of order for the Goods.

1.8.1.2 Invoices for Goods will ordinarily be issued on delivery of the Goods. If the Goods are specific to the Customer or if the Customer fails to take delivery when required SBS EPOS may invoice the Customer at any time after the Goods become available.

1.8.1.3 SBS EPOS may require the Customer at any time prior to delivery to pay a deposit to secure any order or part thereof.

1.8.1.4 Any quantity discount given by SBS EPOS at the point of order may be removed if the order quantity is subsequently reduced.

1.8.1.5 SBS EPOS reserve our statutory right to add interest and a debt recovery cost under the Late Payments of Commercial Debts (Interest) Act 1998, the Late Payment of Commercial Debts Regulations 2002 and the Late Payment of Commercial Debts Regulations 2013. This applies to any balance outstanding beyond the payment terms stated on the agreement, if no payment terms are stated then our standard 30 day payment term applies.

1.8.1.6 Any invoice with an agreed payment plan or beyond our standard 30 days shall become due in full should the customer default or miss any payment during this arrangement.

PART 2 – PROVISION OF SUPPORT

The following terms and conditions apply to the service described in the Support Agreement ("Support ")

2.1 **SBS EPOS Responsibilities**

2.1.1 SBS EPOS will, subject to these Terms, provide Support in accordance with the terms of the Support Agreement.

2.1.2 SBS EPOS will use its reasonable endeavours to respond to a valid Call within the response time set out in the Support Agreement.

2.1.3 SBS EPOS will use its reasonable endeavours to rectify defects or malfunctions in the Equipment on the telephone or by use of remote access in accordance with the Support Agreement.

2.1.4 If a defect or malfunction in the Equipment cannot be resolved on the telephone or by remote access, SBS EPOS will use its reasonable endeavours to visit the Installation Address within the response times set out in the Support Agreement.

2.1.5 When carrying out work in accordance with these Terms, SBS EPOS will use its reasonable endeavours to return the Equipment to service and, subject to these Terms, reinstate the Customer's applications.

2.1.6 SBS EPOS may at its discretion provide a permanent replacement part for the Equipment, either new or refurbished, and on exchange that part becomes the property of the Customer, and the faulty part replaced becomes the property of SBS EPOS.

2.1.7 SBS EPOS may repair the Equipment away from the Installation Address when it considers it necessary to do so.

2.1.8 SBS EPOS may at its discretion, lend the Customer temporary replacement equipment (as compatible as may be available) while repairs are carried out. Equipment loaned to the Customer remains SBS EPOS's property and will be returned to SBS EPOS on demand. The Customer is entirely responsible for such equipment and will indemnify SBS EPOS in respect of any loss or damage to that equipment.

2.1.9 SBS EPOS may make use of new releases, patches and updates of Third Party Software to rectify known problems where this is permitted under the applicable software licence agreement.

2.1.10 Where SBS EPOS is required to carry out or does carry out work that is subsequently found to be outside Support, SBS EPOS will be entitled to charge for that work at SBS EPOS's then current rates.

2.2 **Term**

2.2.1 Support will commence on the date set out in the Support Agreement and, subject to these Terms, continue unless and until either party serves at least one month's prior written notice of termination on the other expiring on the date of expiry of the Initial Term (12 months) or expiry of any Renewal Period (as the case may be).

2.3 **Period of Availability**

2.3.1 SBS EPOS will only provide Support during the Scheduled Service Hours. If the Customer requests SBS EPOS to carry out any Support outside the Scheduled Service Hours then, SBS EPOS will use its reasonable endeavours to comply with this request but will charge the Customer for such services at SBS EPOS's then current rates.

2.3.2 The time taken by SBS EPOS to respond to a Call will only be measured during the Scheduled Service Hours.

2.4 **Customer Responsibilities**

2.4.1 The Customer will keep the Equipment in the environmental conditions recommended by the Equipment manufacturer and ensure that the external surfaces, cables and fittings of the Equipment are kept clean and in good condition.

2.4.2 The Customer will ensure that the Equipment is only used by properly trained staff in accordance with the manufacturer's user instructions, current computing practice and instructions issued by SBS EPOS from time to time.

2.4.3 The Customer will ensure that only personnel authorised by SBS EPOS adjust, or the Customer's in house IT support personnel, modify, configure, maintain, repair, replace or remove any part of the Equipment.

2.4.4 The Customer will maintain adequate records of the use, maintenance and malfunction of the Equipment and will provide SBS EPOS with such information and assistance concerning the Equipment, its application, use, location and environment as SBS EPOS may reasonably require to enable it to carry out Support.

2.4.5 The Customer will immediately notify SBS EPOS if there is any failure of the Equipment and will allow SBS EPOS full and free access to the Equipment and all documentation, software, materials and services necessary for the provision of the Support Maintenance.

2.4.6 The Customer will ensure that relevant trained and experienced staff are available when required by SBS EPOS to provide SBS EPOS with information required by SBS EPOS to diagnose and/or repair the Equipment.

2.4.7 Where SBS EPOS provides remote diagnostic services in respect of the Equipment, the Customer will put and keep in place a remote access link to the Equipment which is acceptable to SBS EPOS. The Customer hereby agrees that SBS EPOS shall have the right at any time to access the Customer's Equipment remotely for the purpose of providing Support. The Customer acknowledges and agrees that such remote diagnostic services may be undertaken at times where the Customer is unavailable (for example, outside the Customer's working hours) and SBS EPOS shall have the right to perform any diagnostic and maintenance services as it sees fit even if it has not been possible to contact the Customer and inform the Customer of the proposed performance of such services.

2.4.8 The Customer must tell SBS EPOS in writing immediately that the Equipment or any part of it is changed.

2.4.9 The Customer will notify SBS EPOS of change in the location of any part of the Equipment. Whilst any Equipment is being moved, all SBS EPOS's obligations to provide Support will be suspended. Support will be reinstated following re-installation of the Equipment provided that the Equipment has not been damaged or affected during the move. If the Equipment has been damaged or affected during the move SBS EPOS shall have the option to inspect such Equipment at SBS EPOS's then current rates.

2.4.10 Unless specifically included in the Support Agreement, the Customer is responsible for the cost of any Third Party Software upgrades which SBS EPOS advise are required.

2.4.11 It is the Customer's sole responsibility, in a manner acceptable to SBS EPOS, to operate and verify a proper back up routine, maintaining all back up copies in a secure environment such that they can and will be provided to SBS EPOS when required.

2.4.12 The Customer undertakes to put and keep in place adequate security measures to protect the Equipment and any other software or data from viruses, harmful code or unauthorised access. SBS EPOS shall not be responsible for any unauthorised access to the Equipment by means of hacking, any unauthorised access of the Equipment with intent to commit or facilitate the commission of an offence or any unauthorised modification of Equipment by a third party.

2.4.13 Whilst every effort is made to maintain a remote access link to the Equipment, SBS EPOS will not be liable for any loss suffered by the Customer if for any reason the remote access link is unavailable or interrupted for any period of time.

2.4.14 The Customer is solely responsible for any connection charges, line rental charges and call charges in relation to any Equipment.

2.5 **Proactive Support Visits**

2.5.1 During the Initial Term (12 months) and any Renewal Period, SBS EPOS will provide to the Customer the number of support visits specified in the Support Agreement during Normal Working Hours, the purpose of which is to provide general support in respect of the operation of Support. Any unused support visits that are remaining at the end of the Initial Term and/or any Renewal Period will automatically lapse and shall not be rolled on to the next Renewal Period.

2.6 **System Audit**

2.6.1 SBS EPOS will, as often as SBS EPOS thinks necessary and (save in the event of an emergency) upon reasonable notice carry out a System Audit within SBS EPOS's Normal Working Hours to confirm that, in SBS EPOS's opinion, the Equipment is in reasonable operating condition.

2.6.2 If work is required to put the Equipment in such full working order SBS EPOS will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, SBS EPOS may on written notice exclude such equipment from Support and will refund to the Customer by way of credit note a fair proportion of any Charges which have been paid by the Customer in respect of such equipment from the end of the notice period.

2.7 **Support Exclusions**

2.7.1 Support does not extend to:

2.7.1.1 any Equipment not specified or included in the Support Agreement including any part of the Equipment which is in any way changed from that included in the Support Agreement;

2.7.1.2 any Equipment which was, in SBS EPOS's reasonable opinion, operating in an unstable or unsuitable manner prior to the commencement of Support;

2.7.1.3 any work arising as a result of any breach by the Customer of any of its obligations under these Terms;

2.7.1.4 any work arising from any incident, wilful act or any error or omission in the operation of the Equipment or any other cause (except for wear and tear) which is not due to the neglect or default of SBS EPOS;

2.7.1.5 any failure or defect caused by hardware or software not covered by these Terms;

2.7.1.6 failures or defects due to manufacture or design defects over which SBS EPOS has no control;

2.7.1.7 refurbishment or repair of casings or outer surfaces;

2.7.1.8 any work to accessories, alterations, attachments or any other equipment that is external to the Equipment not identified within the Support Agreement;

2.7.1.9 reinstatement of customised versions of the standard desktop/operating system;

2.7.1.10 reinstatement of the Customer's software and data not identified within the Support Agreement;

2.7.1.11 any consultancy, training or software or hardware SBS EPOS may provide;

2.7.1.12 integration of the Equipment or any part thereof with other systems;

2.7.1.13 cleansing of viruses and spyware, or resolving the consequences of security breaches and incompatibilities in hardware and/or software.

2.7.1.14 upgrading the Operating Platform to be able to operate the Customer's selected software applications;

2.7.1.15 consumable supplies or accessories such as magnetic media, batteries, print heads, toner cartridges, ink, paper, and any other items identified as consumable by the Equipment manufacturer, unless listed in the Support Agreement;

2.7.1.16 any Equipment in respect of which a notice has been served by SBS EPOS under clauses 2.8 or 2.9;2.7.1.17 any work arising by reason of any maintenance or repair work carried out in respect of the Equipment by a third party not previously approved in writing by SBS EPOS;

2.7.1.18 in respect of any personal digital assistants or other mobile solutions comprised within the Equipment anything other than support of the Third Party Software to enable synchronisation to such server of the Customer as is specified in the Support Agreement;

2.7.1.19 any services which are specifically excluded in the Support Agreement.

2.7.1.20 any equipment damaged as a result of external power influences to include power surges and power failure.

2.7.1.21 this support agreement does not include any parts required to repair any equipment and these parts will be quoted and agreed before invoice. Any equipment which does however still have a valid warranty period in place will be covered as per the standard manufacturer's warranty.

2.7.1.22 in respect of any personal digital assistants or other mobile solutions comprised within the Equipment anything other than support of the Third Party Software to enable synchronisation to such server of the Customer as is specified in the Support Agreement;

2.7.1.23 any services which are specifically excluded in the Support Agreement.

2.8 **Beyond Economic Repair**

2.8.1 SBS EPOS will give the Customer written notice if, in its reasonable opinion, the Equipment (or any part of it) is identified as "end of life", becomes beyond reasonable repair or spare parts become not readily available, or if faults and/or its condition are such that overhaul or replacement is necessary at which point any obligations of SBS EPOS to provide Support in respect of such equipment will be suspended. If the Customer declines to have the Equipment overhauled or replaced at its expense within thirty days of such notification, SBS EPOS may on written notice exclude such equipment from this Contract and refund to the Customer by way of credit note a fair proportion of any Charges which have been paid by the Customer in respect of such equipment from the end of the notice period and will remove any loan equipment relating to the said equipment from the end of the notice period.

2.8.2 The provisions of clause 2.8.1 will apply equally in respect of any software included within the Equipment which, in the reasonable opinion of SBS EPOS, is no longer economically viable to maintain or requires upgrading or updating.

2.9 **Take on Visit**

2.9.1 Prior to commencement of Support, SBS EPOS may during Normal Working Hours inspect the Equipment, or any part of it, at the Installation Address to confirm that it is, in SBS EPOS's reasonable opinion, in full working order in accordance with the manufacturer's requirements. If work is required to put the Equipment in such full working order SBS EPOS will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, SBS EPOS may on written notice exclude such equipment from Support and will refund to the Customer by way of credit note a fair proportion of any Charges which have been paid by the Customer in respect of such equipment from the end of the notice period.

2.10 **Charges and Payment**

2.10.1 The Charges quoted in the Support Agreement for Support are for the Initial Term (12 months) only. The Customer will be notified of the Charges applicable to any Renewal Period (after the initial 12 months) within 30 days before the end of the Initial Term and 30 days before the end of any subsequent Renewal Period (as applicable).

2.10.2 In respect of Support for the Initial Term the Customer will pay the monthly / annual Charges to SBS EPOS from the Agreement Start Date, or within 30 days of the date of SBS EPOS's invoice, whichever is earlier, and thereafter in respect of any Renewal Period the Customer will pay the Charges to SBS EPOS within 15 days prior to the commencement of any subsequent Renewal Period.

2.10.3 Support contracts are payable by monthly standing order or direct debit mandate. Support contracts will automatically renew after the initial 12 month period to ensure continued support services.

2.10.4 SBS EPOS reserves the right to charge an admin fee at its current rates for any failed monthly payment in order to cover costs.

2.10.5 SBS EPOS reserve the right to suspend any support services caused by a missed or late payment of any invoice raised in relation to support or indeed raised against the customer's account to include invoices not in direct relation to the support agreement itself.

PART 3 - SERVICES

The following terms and conditions apply to all Services provided or to be provided to the Customer.

3.1 **Formation of Contract**

3.1.1 SBS EPOS will sell and the Customer will buy the Services in accordance with SBS EPOS's written Proposal (if accepted by the Customer) or the Customer's written order (if accepted by SBS EPOS) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by SBS EPOS unless SBS EPOS confirm this in writing.

3.2 **SBS EPOS's obligations**

3.2.1 SBS EPOS shall use reasonable endeavours to provide the Services and to deliver the System to the Customer, in accordance in all material respects with the Functional Specification (if any), Proposal (if any) and/or Project Plan (if any).

3.2.2 SBS EPOS may at its discretion appoint a project manager to liaise with the Customer on all matters relating to the Services. SBS EPOS shall use reasonable endeavours to ensure that the same person acts as project manager throughout the provision of the Services, but may replace him from time to time where reasonably necessary in the interests of SBS EPOS's business.

3.2.3 SBS EPOS shall use reasonable endeavours to meet any performance, installation, deployment or training dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

3.3 Customer's obligations

3.3.1 The Customer shall:

3.3.1.1 co-operate with SBS EPOS in all matters relating to the Services and appoint a project manager (or a suitably qualified member of staff), who shall have the authority to contractually bind the Customer on matters relating to the Services;

3.3.1.2 provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by SBS EPOS;

3.3.1.3 provide in a timely manner such information and documentation as SBS EPOS may request, and ensure that such information and documentation is correct and accurate in all material respects;

3.3.1.4 be responsible (at its own cost) for preparing the relevant premises for the supply of the Services; and

3.3.1.5 ensure in the interests of health and safety that SBS EPOS's personnel, while on the Customer's premises, are at all times familiar with the Customer's premises and safety procedures.

3.3.2 If SBS EPOS's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to SBS EPOS on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of opportunity to deploy resources elsewhere), subject to SBS EPOS confirming such costs, charges and losses to the Customer in writing.

3.4 Change control

3.4.1 The project managers shall meet on a regular basis to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

3.4.2 If either party requests a change to the scope or execution of the Services, SBS EPOS shall, within a reasonable time, provide a written estimate to the Customer of:

3.4.2.1 the likely time required to implement the change;

3.4.2.2 any variations to SBS EPOS's charges arising from the change;

3.4.2.3 the likely effect of the change on the Proposal and/or Project Plan; and

3.4.2.4 any other impact of the change on the terms of the Contract.

3.4.3 If the Customer wishes SBS EPOS to proceed with the change, SBS EPOS has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Services, the relevant Proposal, Project Plan and any other relevant terms of the Contract to take account of the change.

3.4.4 Notwithstanding clause 3.4.3 SBS EPOS may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

3.4.5 SBS EPOS may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with Clause 3.5.2.

3.5 **Charges and payment**

3.5.1 Clause 3.5.2 shall apply if the Services are to be provided on a time-and-materials basis. clause 3.5.3 shall apply if the Services are to be provided for a fixed price.

3.5.2 Where the Services are provided on a time-and-materials basis:

3.5.2.1 the charges payable for the Services shall be calculated in accordance with SBS EPOS's standard daily fee rates as amended from time to time;

3.5.2.2 SBS EPOS's standard daily fee rates are calculated on the basis of an 8.0 hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays) either spent at the Customer's premises or at SBS EPOS's premises;

3.5.2.3 SBS EPOS shall be entitled to charge overtime rate at its standard rates for time worked by members of the project team outside the hours referred to in clause 3.5.2.2;

3.5.2.4 SBS EPOS shall invoice the Customer for its charges for time, expenses and materials (and VAT, where appropriate) either at the start of a project or monthly in advance for the month concerned.

3.5.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Proposal. The total price shall be paid by the Customer to SBS EPOS in instalments as set out in the Proposal on its achieving the corresponding Project Marker. On achieving a Project Marker, SBS EPOS shall invoice the Customer for the charges that are then payable, together with expenses and materials (and VAT, where appropriate).

3.5.4 SBS EPOS reserves the right to charge an admin fee at its current rates for any failed monthly payment in respect to on-going services, in order to cover costs.

3.5.5 SBS EPOS reserve the right to suspend any on-going services caused by a missed or late payment of any invoice raised in relation to services or indeed raised against the customer's account to include invoices not in direct relation to any service agreement itself.

3.6 **Intellectual Property Rights**

3.6.1 Intellectual Property Rights and all other rights in the System and any associated or other documentation produced as a result of the Services (other than the Third Party Software) shall be owned by SBS EPOS and the Customer shall have no right title or interest therein except as expressly set out in this Contract.

3.6.2 So long as the Customer shall have made all payments due under this Contract in accordance with its terms and subject to the terms of clause 1.3, SBS EPOS shall grant to the Customer a non exclusive, non transferable licence to such extent as is

necessary to enable the Customer to make reasonable use of the System and the Services as is envisaged by the parties. If SBS EPOS terminates the Contract, this licence will automatically terminate.

PART 4 – GENERAL PROVISIONS

The following terms and conditions apply to all Equipment sold or to be sold, Software licensed or to be licensed, Services provided or to be provided and/or Support provided or to be provided to the Customer.

4.1 General

4.1.1 These Terms may only be amended, or varied with SBS EPOS's agreement in writing. The parties agree that these Terms will prevail notwithstanding any conflicting or additional terms or any orders or other notifications submitted by the Customer.

4.1.2 Words of a technical nature used in these Terms will (unless inconsistent with the context) be construed in accordance with general trade use in the computer industry in the United Kingdom.

4.1.3 Headings in these Terms are for convenience only and have no effect on the interpretation.

4.1.4 Failure by either party to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under these Terms or otherwise nor will any single or partial exercise thereof preclude any further or subsequent exercise.

4.2 **Specification**

4.2.1 The description of any Goods contained in any order form, invoice, descriptive matter, specifications, catalogue or advertising material published or issued by SBS EPOS is for identification only and the use of such description will not constitute a sale by description. Any typographical or other error or omission in any such literature or any other document issued or provided by SBS EPOS may be corrected by SBS EPOS without any liability on the part of SBS EPOS.

4.2.2 SBS EPOS reserve the right to supply Goods which differ from the specifications agreed between the parties and/or to modify any specifications in respect of Support provided that this does not materially affect the performance of the Goods or Support.

4.3 **Prices**

4.3.1 Unless otherwise stated in writing, Proposals are valid for 30 days from the date of issue and are exclusive of VAT and any other relevant taxes which are payable by the Customer in addition.

4.3.2 All waiting time spent by any employees or agents of SBS EPOS (which includes any time which had been allocated to a Customer by SBS EPOS and which is not utilised by such Customer for any of the reasons set out in this clause) as a result of any delay, variation or failure by the Customer to comply with these Terms (which for these purposes includes any delays or postponements by the Customer of any installation dates specified by SBS EPOS, of dates of scheduled service visits or otherwise) will be payable by the Customer to SBS EPOS at SBS EPOS's then current rates.

4.3.3 The Customer shall pay any chargeable expenses and disbursements which are incurred by SBS EPOS personnel on behalf of the Customer including but not limited to hotels, subsistence, travelling, mileage at 40p per mile, supplies, telephone charges, copying charges and the cost of any materials or services reasonably and properly provided by third parties required by SBS EPOS for the supply of services.

4.4 **Payment**

4.4.1 If no payment date(s) has been agreed in writing in accordance with these Terms then payment by the Customer will be made within 30 days after the date of SBS EPOS's invoice.

4.4.2 If any payments from the Customer under these Terms are payable by instalments, the Customer will pay such instalments in advance by direct debit or such other method as SBS EPOS may agree, at the intervals agreed in writing with SBS EPOS.

4.4.3 If the Customer fails to make any payment due to SBS EPOS (whether under these Terms or otherwise) on its due date then SBS EPOS may (without prejudice to any other remedy) cancel the Contract or suspend any further performance of any obligations by SBS EPOS to the Customer or appropriate any money received from the Customer against such sums as SBS EPOS may determine (notwithstanding any instructions from the Customer). For the avoidance of doubt, SBS EPOS will be entitled to suspend the performance of Support in the event that there are any sums owing by the Customer in respect of any other goods and/or services provided by or on behalf of SBS EPOS to the Customer.

4.4.4 All payments due to SBS EPOS under these Terms will be paid in full without any set off, deduction, counterclaim or withholding of any sum for whatever reason.

4.4.5 SBS EPOS reserves the right to charge interest on the amount of any delayed payment at the rate of 8% over the base rate of The Co-Operative Bank from time to time per calendar month or part thereof on the outstanding amount until payment has been made in full.

4.4.6 If payment is to be made by Direct Debit, SBS EPOS shall debit any deposit amounts payable within 3 working days of signature and completion of instruction unless agreed otherwise in writing..

4.5 **Lease**

4.5.1 If any payments due to SBS EPOS in respect of Goods or services is to be paid by a third party then the Customer agrees that immediately on delivery of the Goods in question the Customer will sign the acceptance note for the leasing company or other third party and will generally take all steps as may be necessary to ensure that payment is made to SBS EPOS for the Goods and/or services in accordance with these Terms.

4.6 **SBS EPOS Employees**

4.6.1 The Customer will take all such steps as may be necessary to ensure the safety and welfare of any of SBS EPOS's representatives who visit any premises of or on behalf of the Customer.

4.6.2 The Customer will fully indemnify and hold harmless SBS EPOS from and against any claim for loss, damage or injury to any person or property occasioned by or arising directly or indirectly from any negligence or misuse of the Goods or the Equipment or any other breach of these Terms by or on behalf of the Customer.

4.7 **Liability**

4.7.1 Subject as expressly provided in these Terms and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of SBS EPOS for any fraudulent misrepresentation.

4.7.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transaction (restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.

4.7.3 The Customer accepts that in respect of the sale of the Goods, whilst SBS EPOS will endeavour to use its expertise and experience to advise the Customer, SBS EPOS is acting as a supplier only and it is the Customer's responsibility to ensure that the Goods will be suitable for its requirements and the Customer acknowledges that prior to the Contract it has fully and accurately advised SBS EPOS of its requirements, both present and anticipated, in respect of the Goods.

4.7.4 If SBS EPOS is unable, other than through the act or default of the Customer, within a reasonable time to repair or replace any defective Goods in accordance with the Warranty set out in these Terms and where such Goods are unusable due to such defect then, the Customer's only remedy is to reject such Goods and on their return to SBS EPOS' s premises the Customer is entitled to recover the price paid for such Goods provided the Customer notified such defect in accordance with these Terms,

4.7.5 Except in the case of death or personal injury caused by SBS EPOS's negligence, or liability for defective products under the Consumer Protection Act 1987, SBS EPOS will not have any Liability to the Customer for loss of profit or any indirect, special or consequential Loss of the Customer arising out of or in connection with the provision of any goods or services or any delay in providing or failure to provide any goods or services even if SBS EPOS had been advised of the possibility of such potential loss.

4.7.6 Without prejudice to clause 4.7.8, if SBS EPOS fails to provide Support in accordance with its obligations hereunder, the total Liability of SBS EPOS in any one year for any Loss suffered by the Customer as a result of such failure will not exceed the Charges paid by the Customer in such year for the Support in question.

4.7.7 Without prejudice to clause 4.7.8, if SBS EPOS fails to provide the Services in accordance with its obligations hereunder, the total Liability of SBS EPOS for any Loss suffered by the Customer as a result of such failure will not exceed the charges paid by the Customer in respect of such Services.

4.7.8 Notwithstanding the express provisions of clauses 4.7.6 and 4.7.7, except in the case of death or personal injury caused by SBS EPOS's negligence, or liability for defective products under the Consumer Protection Act 1987, in no event shall SBS EPOS's Liability in respect of any Loss to the Customer exceed £50,000.

4.7.9 Except in the case of death or personal injury caused by SBS EPOS's negligence, or liability for defective products under the Consumer Protection Act 1987, no action regardless of form may be brought by the Customer more than 12 months after the cause of action has accrued.

4.7.10 SBS EPOS will have no liability under these Terms or otherwise to the Customer arising out of:

4.7.10.1 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising by reason (in whole or in part) of the Customer's failure to maintain adequate back-up copies of all of its operating system software, application software, data files and other documentation;

4.7.10.2 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising, including but not limited to loss which may occur, whilst installation, service or maintenance work is being carried out by or on behalf of SBS EPOS in accordance with these Terms or any other reason;

4.7.10.3 any act or omission of any third party telecommunication provider, or fault or failure of their equipment (including any prevention of any remote servicing facility in respect of the Equipment);

4.7.10.4 and if any damage to any of the program or data files of the Customer occurs then SBS EPOS's responsibility will be confined to assisting the Customer to restore the latest backup copy and installing application software made available on site by the Customer. If on site assistance is required to reconstruct the files then SBS EPOS will charge the Customer for the cost of such assistance at SBS EPOS's then current rates.

4.7.11 The Customer warrants to SBS EPOS that none of its employees nor the employees of any other party will become employees of SBS EPOS by reason of the provision of the services by SBS EPOS under these Terms, the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the Regulations") or otherwise. The Customer will repay to SBS EPOS any costs, expenses or other sums for which SBS EPOS is or may be liable by reason of the applicable or alleged application of the Regulations in relation to provision of such services by SBS EPOS including (without limitation) any compensation or damages which SBS EPOS pays to any such person.

4.8 **Warranties**

4.8.1 The Customer warrants and represents that the use by SBS EPOS of any data, materials or equipment supplied by the Customer for use by SBS EPOS, will not infringe the Intellectual Property Rights of any third party and the Customer will fully indemnify SBS EPOS in this respect.

4.9 **Confidentiality**

4.9.1 Except as expressly provided, neither party may at any time whether during or after the expiry of these Terms use or disclose the other party's Confidential Information and the Customer will take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations will continue beyond the termination of employment with the Customer.

4.9.2 SBS EPOS may as a consequence of providing any services to the Customer be exposed to information which the Customer may consider to be Confidential Information. It is the Customer's responsibility to ensure that any such Confidential Information is marked appropriately or otherwise identified in writing to SBS EPOS.

4.9.3 The obligations of this clause 4.9 shall survive the termination of these Terms.

4.10 **Performance**

4.10.1 SBS EPOS will not be liable for any failure or delay in complying with these Terms if the failure of delay was due to force majeure, including any circumstances whatsoever beyond the reasonable control of SBS EPOS in which event SBS EPOS will as soon as reasonably practicable notify the Customer of the nature and extent of the circumstances in question. If the force majeure continues for more than 30 days then SBS EPOS may cancel this Contract (or any part thereof) without liability to the Customer.

4.11 **Sub-Contracts**

4.11.1 SBS EPOS may assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under this Contract to any person at any time. SBS EPOS is a member of a group of companies and accordingly SBS EPOS may perform any of its obligations or exercise any of its rights under this Contract through any member of its group.

4.11.2 The Customer acknowledges that this Contract is personal to the Customer and that it may not assign or in any way make over to any third party, whether in whole or in part, the benefit of, and/or it's obligations under this Contract without the prior written authority of SBS EPOS and on such terms as SBS EPOS may reasonably require.

4.11.3 Save where expressly stated in these Terms, no person will become entitled to enforce any of its provisions of these Terms who would not have been so entitled but for the provisions of the Contracts (Rights of Third Parties) Act 1999, the provisions of which do not apply to these Terms.

4.12 **Termination**

4.12.1 SBS EPOS may without prejudice to any other remedy available to it at any time by giving written notice terminate or suspend this Contract or such part of it as SBS EPOS may elect (including stopping any Goods in transit) if:

4.12.1.1 the Customer commits any continuing or material breach of these Terms and if the breach is capable of remedy, is not remedied within thirty days of a written notice detailing the breach;

4.12.1.2 a resolution is passed or an order is made for the liquidation of or the winding up of the Customer (save for the purpose of a bona fide reconstruction or amalgamation);

4.12.1.3 the Customer becomes subject to an administration order, a receiver or manager or administrative receiver is appointed over the Customer's property or assets;

4.12.1.4 the Customer suffers execution or distress or takes or suffers any similar action in consequence of a debt;

4.12.1.5 the Customer is insolvent or would be taken as insolvent under section 123 Insolvency Act 1986;

4.12.1.6 the Customer is dissolved or otherwise threatens or ceases to carry on business or a substantial part of it;

4.12.1.7 in the case of a sole trader or partnership anything analogous to any of the above occurs.

4.12.2 On termination of this Contract for any reason the Customer will return or delete any of SBS EPOS's Confidential Information and return to SBS EPOS all property of SBS EPOS under the Customer's possession or control and SBS EPOS will return or delete any of the Customer's Confidential Information and return to the Customer all property of the Customer under SBS EPOS's possession or control.

4.12.3 On termination of the Contract any licence to use software granted by SBS EPOS will immediately terminate and the Customer will return to SBS EPOS any such software and all copies thereof and will not use or permit the use of any such software. The Customer acknowledges and agrees that SBS EPOS will be entitled to remove such software from all operating systems of the Customer whether by means of remote access or otherwise. The Customer will not do or omit to do anything which might prevent or hinder such removal.

4.12.4 If the Customer terminates this Contract (or SBS EPOS terminates by reason of any acts or omissions of the Customer) then

4.12.4.1 in respect of any Goods such termination can only be made with SBS EPOS's written consent and on terms that the Customer will indemnify SBS EPOS in full against all loss (including loss of profit) costs, charges and expenses incurred by SBS EPOS as a result of such termination; 4.12.4.2 in respect of Support if the termination occurs prior to the end of the Initial Term or any Renewal Period, SBS EPOS may without prejudice to any other remedies available to it demand and receive from the Customer an early termination charge. This charge will be calculated to recover such costs as SBS EPOS has reasonably incurred in equipping itself to deliver Support and which have not been fully recovered by SBS EPOS from the Charges paid by the Customer at the date of termination; and

4.12.4.3 in respect of Services the Customer shall be liable for the full value of SBS EPOS's charges set out in the Proposal as well as any and all charges, fees and additional costs accrued up to the point of termination, which may include but not be limited to software costs and travelling expenses.

4.13 **Data Protection**

4.13.1 Each party will ensure that in the performance of its obligations under these Terms it will at all times comply with the Data Protection Act 1998.

4.13.2 The Customer consents to the processing by SBS EPOS of all the Customer's personal data (as the term 'personal data' is defined in the Data Protection Act 1998) for all purposes connected with these Terms.

4.13.3 The Customer acknowledges that any data transmitted over the Internet or through any other form of transmission including by telephony or other electronic means cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form and that SBS EPOS has no liability for the loss, corruption or interception of any such data.

4.14 **Non Solicitation**

4.14.1 The Customer acknowledges the investment made by SBS EPOS in the training of SBS EPOS's Personnel and the commercial interest which SBS EPOS has in retaining their services.

4.14.2 The Customer agrees that if any of the SBS EPOS Personnel who have provided all or any part of any services for or on behalf of SBS EPOS to the Customer within 6 months of leaving the employment or engagement of SBS EPOS accepts an Engagement with the Customer then the Customer will pay to SBS EPOS such sum as represents 30% of the anticipated annual salary or other sums to be paid by the Customer to such person(s) within the first year of such Engagement.

4.15 **Notices**

4.15.1 All notices under these Terms must be in writing and will be effective only if given by either party to the other party at their last known principal place of business or such other address as that party has nominated, in writing, for that purpose.

4.16 **Law and Jurisdiction**

4.16.1 These Terms will be governed by and construed in accordance with English Law and the English Courts will have non-exclusive jurisdiction to hear all disputes arising in connection with these Terms.

4.16.2 The invalidity or unenforceability for whatever reason will not prejudice the continuation in force of the remainder of these Terms and if any part of these Terms is held by a Court or other competent authority to be illegal or ineffective it or they will be replaced with such legal and effective terms that most closely approach the ineffective terms.

4.17 **Entire Agreement**

4.17.1 These Terms, the Proposal, Project Plan and Support Agreement contains the entire agreement between the parties with respect to their subject matter and supersede all previous written and oral agreements and understandings between the parties. The Customer acknowledges that in entering into the Contract it does not rely on any representation, warranty, agreement or other provision except as expressly set out in these Terms and that all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of SBS EPOS for any fraudulent misrepresentation.

4.18 **Miscellaneous**

4.18.1 any reference to person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); and

4.18.2 any reference to company includes any company, corporation or other body corporate, wherever and however incorporated or established.

4.18.3 The parties hereby agree that a person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (as amended, modified or supplemented from time to time) to enforce any of these Terms.

4.19 **Software Licensing**

4.19.1 software products which are subject to annual licensing will run for 12 months from the date of installation unless stated otherwise on the initial order .

4.19.2 annual licensing where applicable is compulsory or an annual basis and failure to renew will result in the termination of software licensing and render the system inoperable.

4.19.3 where annual licensing is paid monthly annual renewals will occur automatically each 12 months until cancelled.

4.19.4 annual licensing is carried out on a per module basis and not per site.

4.19.5 it is the responsibility of the customer to ensure that renewals are paid each year within good time and to supply an internet connection for on-going and annual software renewal downloads, failure to do so may cause a loss of service.

DEFINITIONS

In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

Agreement Start Date	The date set out in the Support Agreement.
Acceptance Tests	The tests undertaken by the Customer to confirm the System complies in all material respects with the Project Plan
Call	Communication (including an email) received by SBS EPOS from the Customer reporting a defect or malfunction in the Equipment.
Charges	The sums payable by the Customer to SBS EPOS for Support, as set out in the Support Agreement.
Confidential Information	Any trade secrets or confidential or proprietary information of either party, including these Terms, but excluding any information: (a) in the public domain otherwise than by a breach of the Contract; (b) which, prior to disclosure, was already known by the recipient; (c) that the other party develops independently of or to any information that is disclosed to it under the provisions of the Contract; or (d) which is subsequently disclosed to the recipient by a third party at liberty to disclose it.
Contract	The contract between the Customer and SBS EPOS for the sale of Goods, Services and/or Support in accordance with these Terms.
Customer	The person who accepts SBS EPOS's written Proposal for the sale of the Goods, Services and/or the supply of Support or whose written order in respect thereof is accepted by SBS EPOS.
Engagement	The employment, hire or other use, directly or indirectly and whether as an employee or on a self employed basis.
Equipment	All or part of the network, hardware, software and Third Party Software as specified or identified in the Support Agreement.
Functional Specification	The functional specification document detailing the System that is to be delivered.
Goods	The computer hardware, software and related equipment which SBS EPOS is to supply in accordance with these Terms.
Support Agreement	The document provided to the Customer by SBS EPOS setting out response times and coverage in relation to Support as amended by SBS EPOS from time to time (to include any upgrades) and available on request.