

We pride ourselves on being clear and transparent with our customers. There is no small print or grey areas, all conditions of sale are described to you below. Whilst this is a legally binding document and certain terminology is required, we have taken great care to make this as clear and jargon free as possible. As an IT company we endeavour to avoid unnecessary waste & reduce our carbon footprint by using Electronic Agreements, as such all forms, terms and conditions, invoices and statements will be sent to you on email. Please ensure you provide one email address for this purpose. If your email changes you will need to notify us of this. LBS will not print and post documents to you, however you are welcome to print locally if that is your wish.

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# Terms and Conditions



## 1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

<b>Business Day</b>	means a between the hours of 8:30am and 5:30pm GMT on Mondays to Fridays inclusive and between 9am and 1pm GMT on Saturdays but excluding a Sunday or bank or public holiday in England or Wales;
<b>Conditions</b>	means the Supplier's terms and conditions of sale set out in this document;
<b>Confidential Information</b>	means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to the Contract;
<b>Contract</b>	means the agreement between the Supplier and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Order;
<b>Controller</b>	shall have the meaning given in applicable Data Protection Laws from time to time;
<b>Customer</b>	means the person who purchases the Deliverables from the Supplier and whose details are set out in the Order;
<b>Data Protection Laws</b>	means, as binding on either party or the Services: (a) the GDPR; (b) the Data Protection Act 2018; (c) any laws which implement any such laws; and (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
<b>Data Subject</b>	shall have the meaning in applicable Data Protection Laws from time to time;
<b>Deliverables</b>	means the Goods, Software or Services or all as the case may be;
<b>EULA</b>	means the Software end user licence agreement at Part B of the Schedule;
<b>Force Majeure</b>	means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
<b>GDPR</b>	means the General Data Protection Regulation, Regulation (EU) 2016/679;
<b>Goods</b>	means the goods and related accessories, spare parts and documentation and other physical material set out in the Order and to be supplied by the Supplier to the Customer;
<b>Intellectual Property Rights</b>	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: (a) whether registered or not (b) including any applications to protect or register such rights (c) including all renewals and extensions of such rights or applications (d) whether vested, contingent or future (e) to which the relevant party is or may be entitled, and (f) in whichever part of the world existing;

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<b>International Organisation</b>	has the meaning given in the applicable Data Protection Laws from time to time;
<b>Location</b>	means the address(es) for delivery of the Goods and performance of the Services as set out in the Order;
<b>Order</b>	means the Customer's order for the Deliverables;
<b>Personal Data</b>	has the meaning given in the applicable Data Protection Laws from time to time;
<b>Personal Data Breach</b>	has the meaning given in the applicable Data Protection Laws from time to time;
<b>Price</b>	has the meaning given in clause 3.1;
<b>processing</b>	has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including <b>process</b> , <b>processed</b> , <b>processing</b> , and <b>processes</b> shall be construed accordingly);
<b>Processor</b>	has the meaning given to it in applicable Data Protection Laws from time to time;
<b>Protected Data</b>	means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract;
<b>Rental Terms</b>	means the terms set out at clause 10 which will apply where the Order specifies you are renting Goods;
<b>Services</b>	means the services set out in the Order to be supplied by the Supplier to the Customer  The standard services offered by the Supplier shall include standard 'welcome' setup of the System and 30 days remote support from point of delivery. Complimentary implementation training may also be offered and provided by LBS to the Customer (subject to availability), which will consist of up to 2 hours of training, email and/or telephone support. Any additional professional services, further training, on-site support and/or custom work required will be subject to a professional services fee (which will be quoted on application) at the then current Supplier's day / hour rates. All professional services exclude travel, subsistence and living expenses;
<b>Software</b>	any point of sale software provided by the Supplier for use with the Goods or any third party hardware
<b>Specification</b>	means the description or specification of the Deliverables set out or referred to in the Order or Statement of Work;
<b>Statement of Work</b>	means a written description of the Services to be supplied by the Supplier;
<b>Supplier</b>	means Langley Business Systems (Retail) Ltd a company registered in England (company no. 3090463) with its registered address at Langley House, Brandon Way, West Bromwich, West Midlands, B70 8JN, England;
<b>Supplier Personnel</b>	all employees, officers, staff, other workers, agents and consultants of the Supplier, and any of their sub-contractors who are engaged in the performance of the Services from time to time; and
<b>System</b>	means the Supplier's applications, interfaces and technical systems, including any Software and any related manuals
<b>VAT</b>	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the deliverables.

1.2 In these Conditions, unless the context otherwise requires:

- 1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;

- 1.2.3 a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form; and
- 1.2.10 a reference to legislation is a reference to that legislation amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract.

## 2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Customer.
- 2.4 Only the Supplier's nominated representatives details of whom can be obtained from the Supplier are authorised to enter in the arrangement and no other party has authority to bind the Supplier by any representation unless the Supplier notifies the Customer otherwise in writing.
- 2.5 Each Order by the Customer to the Supplier shall be an offer to purchase the Deliverables subject to these Conditions.
- 2.6 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer promptly.
- 2.7 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
  - 2.7.1 the Supplier's written acceptance of the Order; or
  - 2.7.2 the Supplier delivering or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 2.8 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.9 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Deliverables and are incapable of being accepted by the Customer. Quotations are only valid for the period specified on the quotation.
- 2.10 Marketing and other promotional material relating to the Deliverables are illustrative only and do not form part of the Contract. Any error or omission (whether typographical, clerical or other) in any sales literature, quotation, price list, acceptance of offer, invoice, website or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 2.11 If the Customer wishes to cancel an Order after it has been accepted but prior to Deliverables being supplied or performed, the Supplier may (but without being obliged to do so and without prejudice to any other remedy available to the Supplier), apply a cancellation charge of 50% of the total value of the Order, and any deposit received will be allocated against this charge and not refunded.
- 2.12 It is the sole responsibility of the Customer to ensure that the Deliverables it is purchasing meet the Customer's requirements.

2.13 Any advice or recommendation given by the Supplier or its representatives to the Customer regarding the Deliverables, which is not confirmed in writing by the Supplier, if followed or acted upon is at the Customer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed in writing.

2.14 Where the Services include a support plan the terms of Part A of the Schedule shall apply.

### 3 Price

3.1 The price for the Deliverables shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges in force from time to time (**Price**).

3.2 The Prices are exclusive of:

3.2.1 *packaging, delivery, insurance* which shall be charged in addition at the Supplier's standard rates, and

3.2.2 VAT.

3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.

3.4 Deposits taken against Orders are valid for 6 calendar months. If at no fault or delay on part of the Supplier, the Supplier have not been permitted to fill/complete your Order within 6 months, your Order will be cancelled after this time and cancellation fee will apply.

3.5 Where the Supplier has agreed to allow part of the price of any Deliverables to be discharged in part by the Customer delivering a trade-in to the Supplier that allowance shall be given and the trade-in shall be accepted as part of the sale price of the Deliverables on the following conditions:

3.5.1 either the trade-in is the absolute property of the Customer and is free from encumbrances or it is the subject of a hire purchase agreement or other encumbrance capable of being discharged by the Supplier for cash and in the latter case the trade-in allowance given on the price to the Customer shall be reduced by the amount required to be paid by the Supplier in settlement of the agreement or other encumbrance;

3.5.2 if the Supplier has examined the trade-in before the completion of the contract the Customer shall deliver it to the Supplier on completion of the contract in the same condition as at the date of the examination;

3.5.3 the trade-in shall be delivered to the Supplier on or before the delivery of the Deliverables and in any event in fourteen days of notification to the Customer that the Deliverables have been completed for delivery and the property in the trade-in shall then pass to the Supplier absolutely

3.6 If any of the conditions in clause 3.6 are not fulfilled the Supplier shall be discharged from any obligation to accept the trade-in or to make any allowance in respect of it and the Customer shall discharge in cash the full price of the Deliverables.

### 4 Payment

4.1 The Supplier shall invoice the Customer for the Deliverables at any time.

4.2 The Customer shall pay all invoices:

4.2.1 in full without deduction or set-off, in cleared funds within seven days of the date of each invoice; and

4.2.2 to the bank account nominated by the Supplier.

4.3 The Customer acknowledges that no Deliverables shall be supplied or performed, until payment of the applicable invoice is received by the Supplier in cleared funds

4.4 Starting the day after invoice, the Customer will receive daily notifications on its screen for 7 days, asking the Customer to contact the Supplier with a key number. The Customer must contact the Supplier to obtain the payment code to unlock the notification. The Supplier will only generate a code when 100% invoice total has been received in cleared funds. If the Customer does not obtain and enter a valid release code the system will cease to trade after 7 days.

4.5 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:

4.5.1 the Supplier may, without limiting its other rights, charge interest on such sums at in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment, and/or

4.5.2 suspend the supply or performance of Deliverables until payment is made.

4.6 The Supplier shall have a lien and all the Customer's property in the Supplier's possession for all amounts that are owed by the Customer to the Supplier and the Supplier may use sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in or towards the payment of such amounts on twenty-eight days' notice in writing to the Customer. On accounting to the Customer for any balance remaining after payment of any amounts due to the Supplier and the costs of sale or disposal the Supplier shall be discharged of any liability in respect of the Customer's property

## 5 Credit limit

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

## 6 Delivery and performance

6.1 The Goods shall be delivered by the Supplier to the Location on the date(s) specified in the Order. The Goods shall be deemed delivered by the Supplier only on arrival of the Goods at the Location.

The Services shall be performed by the Supplier at the Location on the date(s) specified in the Order. The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the Location.

6.2 The Supplier may deliver or perform the Deliverables in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6.3 Each delivery or performance of the Deliverables shall be accompanied by a delivery note stating:

6.3.1 the date of the Order;

6.3.2 the relevant Customer and Supplier details;

6.3.3 if Goods, the product numbers and type and quantity of Goods in the consignment;

6.3.4 if Services, the category, type and quantity of Services performed;

6.3.5 any special instructions, handling and other requests; and

6.3.6 in the case of Goods, whether any packaging material is to be returned, in which case the Customer shall, after the Goods are unpacked, make them available for collection by the Supplier at the Supplier's expense.

6.4 All deliveries must be signed for by the Customer or its authorised representatives. It is the responsibility of the Customer to have an appropriate and authorised person available to sign for the delivery of the Hardware. The Supplier is not responsible for any deliveries that cannot be made due to an authorised person not being available to receive the Deliverables, or its courier not having access to the delivery location.

6.5 Time is not of the essence in relation to the performance or delivery of the Deliverables. The Supplier shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are approximate only.

6.6 The Supplier shall not be liable for any delay in or failure of performance caused by:

6.6.1 the Customer's failure to: (i) make the Location available, (ii) prepare the Location in accordance with the Supplier's or (iii) provide the Supplier with adequate instructions for performance or delivery or otherwise relating to the Deliverables;

6.6.2 Force Majeure.

6.7 The Customer shall:

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

6.7.2 The Customer will ensure that the Deliverables is only used by properly trained staff in accordance with the Supplier's instruction. The Customer will ensure that only personnel authorised by the Supplier adjust, modify, configure, maintain, repair, replace or remove any part of the Deliverables.

6.7.3 The Customer will maintain adequate records of the use, maintenance and malfunction of the Deliverables and will provide the Supplier with such information and assistance concerning the Deliverables, their application, use, location and environment as the Supplier may reasonably require to enable it to carry out the Services.

6.7.4 The Customer will immediately notify the Supplier if there is any failure of the Goods or the System and will allow the Supplier full and free access to the Deliverables and all documentation, software, materials and services necessary for the provision of the Services. The Customer will ensure that relevant trained and experienced staff are available when required by the Supplier to provide the Supplier with information required to diagnose and/or repair the issue.

6.7.5 It is the Customer's sole responsibility to regularly operate and verify a proper backup routine, maintaining all backup copies in a secure environment.

6.7.6 The Customer undertakes to put and keep in place adequate security measures and up-to-date firewalls to protect the Hardware, Software and Systems from any viruses, harmful code or unauthorised access. The Supplier shall not be responsible for any unauthorised access to the System by means of hacking, any unauthorised access of the

Deliverables with intent to commit or facilitate the commission of an offence or any unauthorised modification of the Deliverables by a third party.

6.7.7 The Customer is responsible for ensuring that their login password to the System remains secure and confidential. The Customer should update their password regularly and 'remember me' type functions should not be used on publicly available or shared computers.

6.7.8 All electrical equipment has been tested by the manufacture at point of manufacture. It is the responsibility of the customer to make sure equipment is adequately tested in relation to current PAT testing guidelines

## 7 Risk

Risk in the Goods shall pass to the Customer on delivery.

## 8 Title

8.1 Unless the provision of the Goods/Equipment is governed by the Rental Terms, title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.

8.2 Until title to the Goods has passed to the Customer, the Customer shall:

8.2.1 hold the Goods as bailee for the Supplier;

8.2.2 store the Goods separately from all other material in the Customer's possession;

8.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;

8.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;

8.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;

8.2.6 not remove or alter any mark on or packaging of the Goods;

8.2.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 20.1.1 to 20.1.4 or 20.2.1 to 20.2.11; and

8.2.8 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.

8.3 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all monies owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

8.4 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 20.1.1 to 20.1.4 or 20.2.1 to 20.2.11, the Supplier may:

8.4.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and

8.4.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

## 9 Warranty

9.1 The Supplier warrants that, in relation to "new" Deliverables for a period of 12 months from delivery and 6 months for second hand Goods (the **Warranty Period**), the Deliverables shall:

9.1.1 conform in all material respects to any sample, their description and to the Specification;

9.1.2 be free from material defects in design, material and workmanship;

9.1.3 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

9.1.4 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13;

9.1.5 any media on which the results of the Services or the Software are supplied shall be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979.

9.2 The Customer warrants that it has provided the Supplier with all relevant, full and accurate information as to the Customer's business and needs.

9.3 The Supplier shall, at its option, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with clause 9, provided that the Customer:

- 9.3.1 serves a written notice on Supplier not later than 7 days from delivery or performance in the case of defects discoverable by a physical inspection, or within 7 days of the date of discovery in the case of latent defects;
- 9.3.2 such notice specifies that some or all of the Deliverables do not comply with clause 9.1 and identifying in sufficient detail the nature and extent of the defects; and
- 9.3.3 gives the Supplier a reasonable opportunity to examine the claim of the defective Deliverables.
- 9.4 The provisions of these Conditions shall apply to any Deliverables that are corrected, repaired, remedied or re-performed with effect from delivery or performance of those Deliverables.
- 9.5 Except as set out in this clause 9:
- 9.5.1 the Supplier gives no warranty and makes no representations in relation to the Deliverables; and
- 9.5.2 shall have no liability for their failure to comply with the warranty in clause 9.1, and shall not be liable for including but not limited to any of the following:
- (a) any defects resulting from wear and tear, accident, improper use by the Customer, or use by the Customer that neglects the Supplier's and/or Manufacturer instructions or advice manufacturer;
  - (b) any Deliverables which have been adjusted modified or repaired except by or at the instance of the Supplier;
  - (c) defects resulting from use of paper rolls, ribbons and other accessories used with equipment that were not provided by the Supplier whether or not the purpose or conditions were known or communicated to the Supplier;
  - (d) any substitution of any materials or components not forming part of any specification of the Deliverables agreed in writing by the Supplier;
  - (e) any descriptions illustrations specifications figures as to performance drawings and in particular weights and dimensions submitted by the Supplier contained in the Supplier's catalogues price-lists or elsewhere since they are merely intended to give a general representation of the Deliverables and not to form part of the Contract or to be treated as representations;
  - (f) any technical information, recommendations, statements or advice furnished by the Supplier its servants or agents not given in writing in response to a specific written request from the Customer before the contract is made; or
  - (g) any variations in the quantities or dimensions of any Deliverables or changes of the Specification or substitution of any materials or components if the variation or substitution does not materially affect the characteristics of the Deliverables and the substituted materials or components are of a quality equal or superior to those originally specified;
  - (h) any Goods where the warranty seals have been broken or altered;
  - (i) any damage (accidental or other) to the Deliverables that is cosmetic (meaning that damage that does not impact the operation and functioning of the Hardware), including rust, change in colour, texture or finish, wear and tear and gradual deterioration;
  - (j) any damage to the Deliverables caused by war, terrorism, fire, accident, natural disasters, intentional or accidental misuse, abuse, neglect or improper maintenance, use under abnormal conditions, accidental drops, spills, or power surges;
  - (k) any damage to the Deliverables caused by improper installation, connection or malfunction of a peripheral device such as a printer, optical drive, network card, or USB device;
  - (l) any damage to the Deliverables through the Customer's neglect to protect the Hardware, Software or System from viruses;
  - (m) any damage to the Hardware or Software caused by an external electrical fault or any accident;
  - (n) fraud, theft unexplained disappearance or wilful acts;
  - (o) liquid or fluid damage or contamination of any kind; or
  - (p) Any damage caused by user error such as malware, uninstallation, other programs, mistreatment or any software problems that are caused by use of anything other than the Supplier's Software,
- and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

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## 10 Rental Terms

10.1 The terms in this clause 10 only apply to Orders which state that Equipment is to be rented/hired to the Customer and unless specifically stated otherwise in the Order a Support Plan does not form part of the Contract. Contracts for the rental/hire of Equipment do not include the supply of any consumables.

10.2 In this clause:

**Equipment** means the items listed in the Order identified as being rented by the Customer;

**Hire Fee** means the amount set out in the Order;

**Hire Period** means the period of 3 calendar years commencing on the date of the Contract which shall automatically renew for further 12 month period unless the Customer terminates the Hire Period in accordance with clause 10.36

**Location** means the location set out in the Order;

10.3 Where there is a conflict between this clause 10 and the remainder of the terms of the Contract, in respect of Equipment, the terms of this clause 10 shall take precedence.

### Hire and quiet enjoyment

10.4 The Supplier hires the Equipment to the Customer for the Hire Period.

10.5 The Supplier agrees that while the Customer pays the Hire Fee and performs the Customer's obligations under this Agreement, the Customer may keep possession of the Equipment and may use it without interruption from the Supplier or persons claiming possession of the Equipment through the Supplier.

### Supplier's promises about the Equipment

10.6 The Supplier promises the Customer that the Equipment:

10.6.1 substantially conforms to specification of it given by the Supplier; and

10.6.2 is of satisfactory quality.

10.7 The promises in clause 10.6 are warranties and are not conditions in this Agreement so that breach of them will not allow the Customer to treat the Agreement as having been repudiated by the Supplier but will entitle the Customer to claim damages.

10.8 The Supplier promises the Customer that it will:

10.8.1 use reasonable endeavours to repair, free of charge, any material defect in the Equipment which manifests itself within warranty term (as specified in clauses 9.1) from delivery of the Equipment, but on the conditions that:

(a) the Customer has notified the Supplier of any defect in writing within 7 days of the defects becoming manifest

(b) the Supplier has been permitted to make a full examination of the Equipment and the alleged defect;

(c) the defect did not become manifest because of anything done to the Equipment by any person other than the Supplier's authorised personnel;

(d) the defect is not present because of any information, design or any other assistance supplied or furnished by the Customer or on its behalf; and

(e) the defect is directly attributable to defective material, workmanship or design,

10.8.2 replace the Equipment that it does not repair under clause 10.8.1 with suitable replacements; and

10.8.3 allow an appropriate reduction in the Hire Fee for each Business Day on which the Equipment is not fully available because of any breach of this clause.

### Payment

10.9 The Customer promises the Supplier that the Customer will:

10.9.1 pay the Hire Fee punctually without demand without any deduction, counterclaim, or set-off (whether at law or in equity); and

10.9.2 pay all other money under this Agreement at the times and in the manner specified in this Agreement.

10.9.3 Payment within 7 days of the specified date for payment is a condition of this Agreement so that any non-payment on the specified date for payment will allow the Supplier to treat the Agreement as repudiated by the Customer and

shall entitle the Supplier to immediate possession of the Equipment and allow the Supplier to exercise any other rights or remedies that arise by law or under this Agreement.

10.10 The Customer will pay Interest to the Supplier on any money that is not paid on the due date for payment from the due date for payment until the actual date of payment.

10.11 Interest will be compounded annually.

## Inspection

10.12 The Customer promises the Supplier that the Customer will:

10.12.1 inspect the Equipment on delivery of it to the Customer or on the Customer's taking possession of it;

10.12.2 notify the Supplier in writing and as soon as reasonably practicable of any defect in the Equipment; and

10.12.3 allow the Supplier (on reasonable notice) at any time access to inspect the Equipment.

10.12.4 If the Customer does not give notification under clause 10.12.1 then the Customer will be conclusively deemed to accept that the Equipment is:

- (a) complete;
- (b) in good order and condition;
- (c) fit for the purpose for which the Customer requires it; and
- (d) in every way satisfactory to the Customer.

## Delivery of the Equipment

10.13 The Supplier will use reasonable endeavours to deliver the Equipment to the Customer at the Location on the date specified in writing by the Supplier or in the absence of such a date being specified with in a reasonable time period following the date of the Order.

## Use of the Equipment

10.14 The Customer promises the Supplier that the Customer will:

10.14.1 use the Equipment:

- (a) in a skilful and proper manner,
- (b) in accordance with any operating instructions issued for it, and
- (c) in accordance with any relevant legislation; and

10.14.2 (without prejudice to clause 10.14.1) ensure that the Equipment is operated and used by properly skilled and trained persons.

## Repair of the Equipment

10.15 The Customer promises the Supplier that the Customer will:

10.15.1 keep the Equipment:

- (a) in good repair, condition, and working order;
- (b) properly serviced and maintained; and
- (c) fitted with any appropriate new parts when repair of any part is not reasonably practicable;

10.15.2 not modify the Equipment except as part of the repairing maintaining and servicing the Equipment required by this Agreement;

10.15.3 keep up to date any computer software programs appropriate for the proper use and operation of the Equipment; and

10.15.4 comply with all requirements and procedures of which the Supplier has notified the Customer in the contract under which the Supplier acquired the Equipment.

## Record keeping

10.16 The Customer promises the Supplier that the Customer will:

10.16.1 maintain accurate and complete records about the Equipment, and its:

- (a) use;
- (b) operation;

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- (c) maintenance;
- (d) servicing;
- (e) repair; and
- (f) replacement,

10.16.2 allow the Supplier to inspect and take copies of the records maintained under clause 10.16.1

10.16.3 Give to the Supplier at the end of the Hire Period the originals of the records maintained under clause 10.16.1.

### The Business of the Customer

10.17 The Customer promises the Supplier that the Customer will:

10.17.1 not do anything that leads any person to attempt to seize, distrain, take possession of, or to attempt to execute any civil recovery or judgement on the Equipment; and

10.17.2 ensure that any landlord or mortgagee of any land where the Equipment is installed or stored acknowledges in writing to the Supplier that the Equipment is not installed so as to become a fixture of any kind.

### Insurance

10.18 The Customer promises the Supplier that the Customer will:

10.18.1 keep the Equipment insured:

10.18.2 for its replacement value;

10.18.3 against all risks on a comprehensive policy without restriction or excess; and

10.18.4 with substantial and reputable insurers in the United Kingdom or the European Union.

10.18.5 keep the Supplier and the Customer insured against all liability to other persons for death, personal injury, and damage to or loss of property arising directly or indirectly out of the use, possession or operation of the Equipment; and

10.18.6 ensure that the insurance is for the higher of:

- (a) the amount stipulated by the Supplier from time to time; and
- (b) an amount that is prudent in all the circumstances

10.18.7 ensure that the insurance policy provides that any payment made under it be made directly in or towards satisfaction of the claim in respect of which such payment is made; and

10.18.8 produce the insurance policy (with proof that the premiums have been paid) to the Supplier on request;

10.19 If the Customer does not comply with the obligations in this clause 10 then:

10.19.1 the Supplier may (but without any obligation) effect the insurance; and

10.19.2 the Customer will reimburse the Supplier on demand the cost of doing so.

10.20 If there is a total loss of the Equipment (whether actual, constructive, or arranged) then **14** Business Days after the event that gave rise to the total loss the Customer will pay to the Supplier:

10.20.1 any arrears of the Hire Fee (including an apportionment of the Hire Fee for any period during which the Equipment is broken);

10.20.2 all the Hire Fee the Customer agreed to pay until the end of the Hire Period (less a discount for accelerated payment at the rate of 5 % a year);

10.20.3 any damages for any breach of this Agreement; and

10.20.4 the proper costs and expenses (including legal fees) incurred by the Supplier in or towards enforcing its rights under this Agreement;

10.20.5 less any insurance proceeds that have been received by the Supplier before the end of that period; and, where appropriate, less a proper allowance for the value of such of the Equipment that remains after the total loss as agreed by the Supplier and the Customer.

10.21 If there is loss or damage to the Equipment that is not a total loss to the Equipment then the Customer will:

10.21.1 notify the Supplier in writing as soon as reasonably practicable;

10.21.2 apply the insurance moneys in making good the loss and damage; and

10.21.3 on written request by the Supplier absolutely assign to the Supplier all the benefit of the Customer under the insurance policy.

10.22 The Customer will indemnify the Supplier against all loss or damage to the Equipment that happens before the Supplier has retaken physical possession of the Equipment to the extent that the Supplier is not indemnified by the insurance money.

### Possession of the Equipment

10.23 The Customer promises the Supplier that the Customer will keep the Equipment in its own possession at the Location.

### Dealings with the Equipment

10.24 The Customer promises the Supplier that the Customer will:

- 10.24.1 not dispose of the Equipment;
- 10.24.2 offer to dispose of the Equipment;
- 10.24.3 attempt to dispose of the Equipment; or
- 10.24.4 purport to dispose of the Equipment.

### Indemnity

10.25 The Customer will indemnify the Supplier against:

- 10.25.1 all loss, actions, claims, demands, proceedings (whether criminal or civil), costs, legal expenses (on a full indemnity basis), insurance premiums and calls, liabilities, judgements, damages or other sanctions whenever arising, directly or indirectly from the Customer's failure or alleged failure to perform its obligations under this Agreement;
- 10.25.2 any loss, injury or damage suffered by any person (including without limitation the Supplier) because of the presence of the Equipment;
- 10.25.3 the delivery, possession, hiring, transportation, condition, use, operation, removal or return of the Equipment;
- 10.25.4 the sale or disposal by the Supplier of the Equipment;
- 10.25.5 any defect in the Equipment or its design, manufacture, testing, maintenance or overhaul save where such testing, maintenance or overhaul has been carried out by LBS; and
- 10.25.6 the Supplier's exercising any right in respect of the Equipment, its ownership, or its hiring.

### Return of the Equipment

10.26 The Customer promises the Supplier that the Customer will:

- 10.26.1 deliver the Equipment to the Supplier within 5 Business Days from the date expiry of the Hire Period;
- 10.26.2 in a condition that complies with the full performance of the Customer's obligations under this Agreement;
- 10.26.3 at such address as the Supplier has then notified to the Customer; or
- 10.26.4 if so notified in writing by the Supplier, allow the Supplier to collect the Equipment from the Location; or
- 10.26.5 if so notified in writing by the Supplier, allow the Supplier to sell the Equipment from the Location.

10.27 If the Customer fails to comply with clause 10.26.1 the Supplier may charge the Customer an increased Hire Fee of £25 plus vat per item of Equipment for each day until the Supplier is in receipt of the Equipment.

### Exclusions

10.28 The Customer agrees that:

- 10.28.1 the Equipment was selected by the Customer;
- 10.28.2 to the full extent allowed by law the Supplier supplies the Equipment without any representation or warranty or subject to any condition about its:
  - (a) description;
  - (b) condition;
  - (c) performance;
  - (d) suitability for any purpose; or
  - (e) quality,

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- 10.28.3 the Supplier will not be liable (in contract or tort or in any other way) to the Customer for any loss, injury, or damage that arises because of any defect (whether latent or apparent) in the Equipment; and
- 10.28.4 the exclusion in this clause does not apply to:
- (a) death or personal injury caused by negligence on the part of the Supplier; or
  - (b) fraud on the part of the Supplier.
- 10.29 The Customer agrees that it has not relied on any statement made by any person on behalf of the Supplier other than as set out in the Contract.
- 10.30 The Customer acknowledges that only the directors and employees of the Supplier had any authority to act on behalf of the Supplier.
- 10.31 The Customer acknowledges that the Supplier will not have any liability to the Customer:
- 10.31.1 for any loss because the Equipment is unusable;
  - 10.31.2 to supply any replacement Equipment during any period when it is unusable;
  - 10.31.3 for any loss because of the Supplier's lawfully terminating the hiring or retaking possession of the Equipment after breach of this Agreement by the Customer.
- 10.32 The Customer agrees that the Supplier does not represent or warrant that:
- 10.32.1 the Equipment does not infringe the rights of confidentiality or intellectual property rights of any other person;
  - 10.32.2 that the Customer's use of the Equipment will not infringe the rights of confidentiality or intellectual property rights of any other person;
  - 10.32.3 or confidential information or intellectual property rights, owned or possessed by any third party; and
  - 10.32.4 the Supplier will not be liable to the Customer for any loss suffered by the Customer because of any such infringement

### Default or breach

- 10.33 The Supplier may terminate the hiring under this Agreement on the occurrence of any of the following events:
- 10.33.1 the Customer does not pay any money under this Agreement at the times and in the manner required by this Agreement;
  - 10.33.2 any breach of:
    - (a) any of the Customer's obligations under this Agreement;
    - (b) any condition of this Agreement;
    - (c) any other agreement between the Supplier and the Customer;
    - (d) any agreement between the Supplier and any company that is a member of the same Group as the Customer;
    - (e) any agreement between any company that is a member of the same Group as the Supplier and the Customer; and
    - (f) any agreement between any company that is a member of the same Group as the Supplier and any company that is a member of the same Group as the Customer.
  - 10.33.3 any of these things happening to the Customer:
    - (a) death;
    - (b) bankruptcy;
    - (c) liquidation;
    - (d) winding up;
    - (e) made the subject of:
      - (i) a petition for winding up;
      - (ii) a resolution for voluntary winding up (otherwise than for a *bona fide* solvent reconstruction);
      - (iii) a petition for the appointment of an administrator, or
      - (iv) the appointment of either or both a receiver or administrative receiver;
      - (v) a meeting of its creditors;

- (vi) a deed of assignment or arrangement or other compounding between the Customer and its creditors;
- (f) distress;
- (g) civil recovery;
- (h) execution; or
- (i) anything similar in any jurisdiction that is not England & Wales.
- (j) if the Customer abandons the Equipment.

### Consequences of termination

10.34 On termination under this clause 10:

10.34.1 the Supplier's consent to the Customer's possession of the Equipment will determine immediately; and

10.34.2 the Supplier will have the rights to take possession of the Equipment wherever it may be.

10.35 On termination under this clause 10 the Customer will pay to the Supplier:

10.35.1 any arrears of the Hire Fee (including an apportionment of the Hire Fee for any period during which the Equipment was broken);

10.35.2 all the Hire Fee the Customer agreed to pay until the end of the Hire Period (less a discount for accelerated payment at the rate of 5 % a year);

10.35.3 any damages for any breach of this Agreement; and

10.35.4 the proper costs and expenses (including legal fees) incurred by the Supplier in or towards enforcing its rights under this Agreement;

10.35.5 less a proper allowance for the value of the Equipment as agreed by the Supplier and the Customer.

### Customer Termination of the Hire Period

10.36 The Customer may terminate the Hire Period, by giving 90 days written notice to the Supplier prior to the expiration of the initial or subsequent term of the Hire Period

### Ownership

10.37 The Customer acknowledges that:

10.37.1 The Supplier will at all times retain the ownership of the Equipment;

10.37.2 The Customer will have no right of ownership in the Equipment;

10.37.3 Whether or not the Equipment has been affixed to any land:

- (a) the Supplier will continue to be the owner of the Equipment; and
- (b) the Equipment will remain the personal chattels of the Supplier.

### VAT

10.38 VAT will be payable by the Customer.

10.39 All monies specified in this Agreement are exclusive of VAT.

### Cost of the Customer

10.40 The obligations of the Customer under this clause 10 are to be discharged at the Customer's cost and expense.

## 11 Subscriptions

11.1 Where the Order specifies that the Deliverables are supplied on a subscription basis the following terms shall apply:

11.1.1 The subscription contract shall last for an initial term of 3 calendar years from the date of the Contract, unless otherwise stipulated in the Order. The subscription contract shall automatically renew for further 12 month period unless the Customer terminates the subscription contract in accordance with clause 11.1.3.

11.1.2 In the event that the Supplier discontinues a product on subscription, the Supplier reserves the right to end the subscription contract providing the Customer with at least 30 days prior written notice. The Supplier will endeavour to offer an alternative Deliverable.

11.1.3 The Customer may terminate the subscription contract, by giving 90 days written notice prior to the expiration of the initial or subsequent term.

- 11.1.4 Upon early termination by the Customer, the Customer shall pay the remaining balance of the 3 year term. This is calculated by multiplying the number of months outstanding by the applicable monthly fee.
- 11.1.5 The first invoice will be pro-rata to the end of first calendar month from date of the Contract, the subsequent payments will be due on the first (01st) of the calendar month, paid in lieu via standing order or Direct Debit.
- 11.1.6 An EPoS Touch Screen must be connected to the internet. Software licenses function by checking with the Supplier's servers to find out the valid license code and payment code.

## 12 Software

- 12.1 Any Software supplied is supplied subject to the terms of the EULA.
- 12.2 The entire and exclusive liability and remedy for breach of this limited warranty for Software shall be limited to replacement of defective media or documentation and shall not include or extend to any claim for or right to recover any other damages, including but not limited to loss of profit data or use of the software or special incidental or consequential damages or other similar claims even if the Supplier has been specifically advised of the possibility of such damages. In no event will the Supplier's liability for any damages to the Customer or any other person ever exceed the paid price of the licence to use the software, regardless of the form of the claim.
- 12.3 The Supplier makes no representation or warranty that the software or documentation are "error-free", or meet any Customer's particular standards, requirements or needs. In all events any implied warranty, representation, condition or other term is limited to the physical media and is limited to the duration of the limited warranty.

## 13 Internet and Network Requirements

- 13.1 The Deliverables require a reliable and robust connection to the internet / local network to take advantage of all of the online features and benefits. It is the Customer's responsibility to ensure that it has an appropriate internet / local network connection in place prior to installation of the Software and to also ensure that the internet connection is maintained correctly and includes an up-to-date firewall. The recommended internet speeds are a minimum 7Mbps download speed and 0.6Mbps upload speed to support up to four till devices. Larger locations / installations will need higher internet speeds as appropriate to the size of installation and business. This speed requirement does not include any additional internet usage required over and above the System such as staff or guest networks or other business requirements. Internet speeds and consistencies can be checked by using internet speed test websites or by contacting the applicable internet service provider.
- 13.2 The Customer must provide a site closed, separate physical network or a separate V-LAN for the System. This must not be shared with other devices, particularly those that cause high volume, high congestion or unpredictable network loads including (but not limited to) guest networks and music or video streaming devices.
- 13.3 The Customer is solely responsible for any connection charges, line rental charges and call charges in relation to any Deliverables.
- 13.4 Whilst the Supplier's representatives may provide advice and an indication of the suitability of the Customer's internet / local network connection, it remains the Customer's sole responsibility to ensure it has a suitable internet / local network connection both before and after an order is placed. The Supplier is not responsible for any slow responses to its Systems, including where this is caused by the Customer's poor internet / local network connection.
- 13.5 Provision of Local Area Network (LAN) infrastructure (e.g. cabling, network switches, WAN router) is the responsibility of the Customer and should be appropriate to the size of business and criticality of the operation.
- 13.6 Where the System is to be used over Wi-Fi (e.g. tablets/mobile devices):
  - 13.6.1 The Customer is responsible for the setup, configuration and management of both the Wi-Fi infrastructure and the Customer devices. This includes ensuring Wi-Fi coverage in required areas and ensuring network dropouts due to Wi-Fi roaming are minimised; and
  - 13.6.2 The Customer must consider that Wi-Fi is not as robust as a wired network and network dropouts can occur due to Wi-Fi coverage, access point roaming, tablet sleep modes as well as other environmental factors. This is not unique to LBS Systems and should be considered when selecting a Wi-Fi solution.
- 13.7 The System are designed to work offline, but where no network connection (LAN or WAN) is available or the network connection is unreliable, some functionality is reduced.
- 13.8 Where Customer devices are used offline for long periods, the Customer must ensure that such devices are regularly (at least every 7 days) connected to the internet to ensure data is synchronised with its servers. All till devices must regularly (at least every 7 days) perform 'End of Day/Close Till' operations to ensure that the local data store can be archived to the servers.

## 14 Indemnity and insurance

- 14.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.
- 14.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

## 15 Limitation of liability

- 15.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 15.
- 15.2 The Supplier shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty of condition of the contract or any negligence breach of statutory or other duty on the part of LBS or in any other way out of or in connection with the performance or purported performance of or failure to perform the contract except as expressly stated in these conditions
- 15.3 The Supplier shall not be liable where the price of any Deliverables does not include carriage or loss or damage in transit and all claims by the Customer shall be made by the Customer against the carrier. Replacement for such or damaged Deliverables will, if available be supplied by the Supplier at the prices ruling at the date of despatch.
- 15.4 Subject to clause 15.7, the Supplier's total liability shall not exceed the sum of the total amount payable by the Customer under the Contract.
- 15.5 Subject to clause 15.7, the Supplier shall not be liable for consequential, indirect or special losses.
- 15.6 Subject to clauses 15.7, the Supplier shall not be liable for any of the following (whether direct or indirect):
- 15.6.1 loss of profit;
  - 15.6.2 loss or corruption of data;
  - 15.6.3 loss of use;
  - 15.6.4 loss of production;
  - 15.6.5 loss of contract;
  - 15.6.6 loss of opportunity;
  - 15.6.7 loss of savings, discount or rebate (whether actual or anticipated);
  - 15.6.8 harm to reputation or loss of goodwill.
- 15.7 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 15.7.1 death or personal injury caused by negligence;
  - 15.7.2 fraud or fraudulent misrepresentation;
  - 15.7.3 any other losses which cannot be excluded or limited by applicable law.

## 16 Intellectual property

- 16.1 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use of the Deliverables infringes the Intellectual Property Rights of any third party (**IPR Claim**), provided that the Supplier shall have no such liability if the Customer:
- 16.1.1 does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
  - 16.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;
  - 16.1.3 does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;

- 16.1.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
- 16.1.5 does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer.
- 16.2 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:
- 16.2.1 procure for the Customer the right to continue receiving the benefit of the relevant Deliverables; or
- 16.2.2 modify or replace the infringing part of the Deliverables so as to avoid the infringement or alleged infringement, provided the Deliverables remain in material conformance to their Specification.
- 16.3 The Supplier's obligations under clause 16.1 shall not apply to Deliverables modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.
- 16.4 The Intellectual Property Rights in the Products supplied by the Supplier may be owned by third party suppliers. Where LBS notifies the Customer that this is the case, the Customer acknowledges that its use of rights in third party materials may be governed by, and will be conditional upon, the Customer agreeing to an end-user licence (or sub-licence) of such rights directly with the relevant licensor.
- 16.5 The Customer agrees not to remove deface or cover up any name plates, logos or trademarks appearing on the Deliverables.
- 16.6 The Customer consents to the Supplier using the Customer's logo, photographs/videos of installation and use quotes from the Customer or its venue managers for promotional purposes. These images may appear for use in any of the following:
- 16.6.1 Printed Publications & Marketing Materials
- 16.6.2 Promotional DVDs/Videos
- 16.6.3 The Supplier's website and social media platforms
- 16.6.4 Local & National Newspapers and their websites
- If you have any questions or comments about any of the above, please contact us on Office Tel: 0121-525-5566 or E-mail [info@lbs-epos.com](mailto:info@lbs-epos.com)
- 16.7 The Customer has the right to withdraw consent given in clause 13.4 at any time without penalty and does not need to give a reason. The Customer can withdraw consent in writing or via email.
- 16.8 The Customer hereby provides the Supplier with a non-exclusive, royalty-free, perpetual, irrevocable, transferable, worldwide licence to use the Customer's transactional data, sales data, product data and stock data that is generated through the System for the enhancement of existing services and the provision of new services for the Supplier its customers and partner organisations. For the avoidance of doubt, any personally identifiable information will be anonymised and/or aggregated.
- 17 Confidentiality and announcements**
- 17.1 The Customer shall keep confidential all Confidential Information of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 17.1.1 any information which was in the public domain at the date of the Contract;
- 17.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
- 17.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier; or
- 17.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- except that the provisions of clauses 17.1.1 to 17.1.3 shall not apply to information to which clause 17.4 relates.
- 17.2 This clause shall remain in force in perpetuity.
- 17.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 17.4 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any provisions of clause 17.5.

- 17.5 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 LBS has no liability for the loss, corruption or interception of any such data.
- 17.6 The Supplier cannot guarantee the recovery of Customer data or Protected Data where this is deleted by the Customer (or by the Supplier at the Customer's request).
- 18 Processing of personal data**
- 18.1 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Supplier in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws.
- 18.2 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.
- 18.3 The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 17.5.
- 18.4 The Supplier shall only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with the Contract (and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest).
- 18.5 Taking into account the state of technical development and the nature of processing, the Supplier shall implement and maintain the technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 18.6 The Supplier shall (at the Customer's cost):
- 18.6.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to the Supplier; and
  - 18.6.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 18.7 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the *United Kingdom* or to any International Organisation without the prior written consent of the Customer.
- 18.8 The Supplier shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this clause 17.5 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28).
- 18.9 On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, the Supplier shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Supplier to store such Protected Data. This clause 17.5 shall survive termination or expiry of the Contract.
- 19 Force Majeure**
- 19.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- 19.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
  - 19.1.2 uses best endeavours to minimise the effects of that event.
- 19.2 If, due to Force Majeure, a party:
- 19.2.1 is or shall be unable to perform a material obligation; or
  - 19.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days;

the other party may, within 30 days, terminate the Contract on immediate notice.

## 20 Termination

- 20.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:
- 20.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
  - 20.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
  - 20.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or
  - 20.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 20.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 20.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 20.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
  - 20.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 20.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 20.2.5 has a resolution passed for its winding up;
  - 20.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 20.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
  - 20.2.8 has a freezing order made against it;
  - 20.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
  - 20.2.10 is subject to any events or circumstances analogous to those in clauses 20.2.1 to 20.2.9 in any jurisdiction;
  - 20.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 20.2.1 to 20.2.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 20.3 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 20, it shall immediately notify the Supplier in writing.
- 20.4 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

## 21 Notices

- 21.1 Any notice or other communication given by a party under these Conditions shall:
- 21.1.1 be in writing;
  - 21.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
  - 21.1.3 be sent to the relevant party at the address set out in the Contract
- 21.2 Notices may be given, and are deemed received:
- 21.2.1 by hand: on receipt of a signature at the time of delivery;
  - 21.2.2 by *first class* post: at 9.00 am on the *second* Business Day after posting;
  - 21.2.3 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
  - 21.2.4 by email: on receipt of a delivery email from the correct address.

- 21.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 21.1 and shall be effective:
- 21.3.1 on the date specified in the notice as being the date of such change; or
- 21.3.2 if no date is so specified, 5 Business Days after the notice is deemed to be received.
- 21.4 All references to time are to the local time at the place of deemed receipt.
- 21.5 This clause does not apply to notices given in legal proceedings or arbitration.
- 22 Cumulative remedies**
- The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.
- 23 Time**
- Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Customer's obligations only.
- 24 Further assurance**
- The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.
- 25 Entire agreement**
- 25.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 25.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 25.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.
- 26 Variation**
- No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Supplier.
- 27 Assignment**
- The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent.
- 28 Subcontracting**
- The Supplier may sub-contract any of its obligations under the Contract.
- 29 Set off**
- 29.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.
- 29.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 30 No partnership or agency**
- The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 31 Equitable relief**
- The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **32 Severance**

- 32.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 32.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## **33 Waiver**

- 33.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 33.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.
- 33.3 A waiver of any term, provision, condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

## **34 Compliance with law**

The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

## **35 Conflicts within contract**

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions and the terms of the Schedule shall prevail.

## **36 Costs and expenses**

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

## **37 Third party rights**

Except as expressly provided for elsewhere in the Contract, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

## **38 Governing law**

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

## **39 Jurisdiction**

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

### Part A Support Plan

LBS offers two optional Support Plans:

- a. Standard Support, which shall include:
  - ✓ Remote Access to the **LBS** support team during Working Hours for
  - ✓ dial in diagnostic & resolution
  - ✓ Technical helpdesk support from LBS's UK call centre
  - ✓ email support
  - ✓ annual system health check and recommendations
  - ✓ Remote training
  - ✓ Out of hours emergency telephone support
  - ✓ Pay monthly
  - ✓ Fixed cost for 12 months irrespective of number of calls/issues
- b. Support & Upgrade which shall include the contents of the Standard Support Plan and:
  - ✓ Annual license upgrade to most current version

### Support Plan Contract

1. Upgrading
  - a. The Customer can upgrade from a *standard support plan* to a *Support & Upgrade Plan* at any time by contacting LBS. If the Customer is already part-way into a Standard Support Contract, this existing contract will be cancelled and replaced by the Upgraded Support contract.
  - b. Where the Customer has paid for a Standard Contract and wishes to upgrade their Contract, the remaining term of the Standard Support Contract will be discounted on receipt of the Upgrade Support Contract's payment on a pro rata basis. The Upgrade Support Contract shall continue for at least 12 months from the date of taking out the Upgrade Support Contract.
2. The Customer can choose to either pay the Support Contract annually in advance or on a monthly basis. Where the Customer chooses to pay for the Support Contract on a monthly basis, the first invoice will be pro-rata to the end of first calendar month from date of inception; the subsequent payments will be due on the first (01<sup>st</sup>) of the calendar month, paid in lieu via standing order.
3. Where a payment fails, LBS will contact the customer to obtain payment. If payment is not made within seven (07) days, LBS retains the right to restrict access to the Software for all of the Customer's licenses, locations and devices until all outstanding payments are made in full.
4. LBS reserve the right to increase the Support Contract after the 12 month guaranteed term, upon providing the Customer with at least 30 days' notice in advance. Should the Customer not agree to the Support Contract fees, the Customer may cancel the Support Contract.
5. Termination.
  - a. The customer may terminate the support contract, by giving 90 days written notice prior to the expiration of the initial or subsequent term.
  - b. Upon early termination by the Customer, pay the remaining balance of the 12 month term. This is calculated by multiplying the number of months outstanding by the applicable monthly fee.
6. All support contracts shall last for an initial term of 12 calendar months, unless otherwise stipulated on the order form.
7. After the initial term (and each subsequent year), the Customer's Support Contract shall automatically renew automatically for further 12 month period unless the Customer terminates in accordance with Section 29.5.
8. In the event that LBS discontinue a Support Plan, LBS reserve the right to end the Support Contract providing the customer with at least 30 days prior written notice. LBS will endeavour to offer an alternative.

### Scope of Standard Support Contract

1. If the Customer has a Support Plan but uses third party hardware, LBS will use reasonable endeavours to resolve any software compatibility issues, but any hardware maintenance issues will be the Customer's sole responsibility.
2. Problems, failures and queries (hereafter referred to as 'calls'), must be logged by a member of your staff who can explain the basics of the fault to be diagnosed. All calls must state the site name and postcode, failure to do so may result in your call not being attended to.
3. Unlimited Technical Helpdesk (hereafter referred to as Tier 1). You may contact us between the hours 8:30 am and 5:30 pm Monday to Friday using telephone number 0121 525 5566, where Tier 1 will be pleased to assist you with the day to day queries associated with the software & Operating EPOS equipment.  
Support is also available on Saturday mornings between 9:00am and 1:00pm (This is for emergencies only).
4. Unlimited Dial in Support (hereafter referred to as Tier 2). Remote diagnostic tools are used to identify and rectify calls. This is available only where your EPOS is connected to the internet and 'Team Viewer' is installed and configured.
5. Unlimited out of Hours Technical Helpdesk (hereafter referred to as Tier 4) is an emergency facility to address 'mission critical' issues that restrict the client from trading. Additional hours covered by TIER 4 are; Monday to Friday 5:30pm to 11:00pm, Saturday 1:00pm to 11:00pm, Sundays and Bank Holidays 11:00am to 11:00pm. Christmas Day, Boxing Day, New Year's Day may be offered by arrangement only. Remote diagnostic tools are not used as part of TIER 4, as this is provided as a telephone emergency line only.  
TIER 4 is a separate phone number, which will be provided after authorisation is received. All TIER 4 calls will be logged to Tier 1 after the event so that information can be used for future support purposes. TIER 4 cover does not include provision for training or programming.
6. Call-out, Labour, parts and repairs are not included and will be quoted on application.
7. LBS will reasonably endeavour to ensure resolution is provided within the shortest possible timescale. Any urgent attention, which the equipment may require, will be dealt with as promptly as possible upon receipt of a telephone call into Tier 1 or email to [support@lbs-epos.com](mailto:support@lbs-epos.com).
8. Failure of operating hardware supplied by LBS will be supported via Tier 1, Tier 2 and Tier 4 as part of this agreement.
9. Hardware and software not purchased from LBS are not covered, unless otherwise stated on your order form for this contract. Call Out, Parts & Labour for this will be charged at the current rates.
10. Annual Remote Maintenance Review. One remote annual Health Check is included on or around the anniversary of the contract and you will receive a report via email of the results. For the annual Health Check to take place, all installed tills will need to be connected to the internet and Team Viewer installed and configured.
11. Work will be carried out during LBS normal business hours. No particular days or times can be guaranteed. Any work requested at times out of LBS business hours must be subject of special arrangements and will be chargeable.
12. This contract does not cover work or attention necessary as a result of miss-use/operation of the equipment(s). LBS liability ceases if the equipment is tampered with or otherwise interfered with by person(s) other than authorised LBS service Personnel. In addition, should the equipment fail as a result of any act of god, mains power surge or mains power interruption, this contract does not cover any repair work required as a result.
13. This contract does not and is not intended to cover fire, theft or any other damage however caused. LBS will make an appropriate charge for any work done or expenses met dealing with such request from the owner for help.
14. Attention is drawn to the fact that this contract does not include the re-programming of any equipment, miss-use or miss-operation of installed programming, changes in programming or otherwise outside of the scope of maintenance or equipment failure.
15. Data file corruption is not covered due to; power failures, internal storage device or component failure, telephone / broadband failure or operator error. In such instances the correction method is to revert to a customers' previously secured back up file, which should be maintained and serviced by the owner.
16. The network infrastructure is not covered: including set up, configuration and problem solving in connection with network, network software, network cards, network switches and network cables. However, initial investigations may be provided to identify that the networking issues are outside of the standard expected operations of the till unit(s) or associated equipment.
17. Operating Systems are not covered: including set up, configuration and problem solving in relation Microsoft or otherwise.
18. If a license/version upgrade is require to resolve a problem or to provide additional functionality this will be charged at the standard rates. On some occasions, additional programming may be required depending on screen resolution and original skin (Look and Feel) setup; this will be quoted on application.

# Terms and Conditions



19. This contract shall not be constructed to cover any claims in respect of consequential losses of what so ever nature, either from malfunction or otherwise however arising and shall be limited to the documented software and its associated license numbers. Any variation or special exception in respect of any of the items of the contract must be signed personally by a director of LBS (Retail) Ltd to be valid since LBS (Retail) Ltd employees and representatives are not authorised to vary the terms and conditions of this document.

## Scope of Upgrade & Support Contract

Support & Upgrade Plan shall include the Scope of Standard Support contract, and one annual Software license/version upgrades to the most recent version at time of Annual Remote Maintenance Review.

## Part B LBS Software End User Licence Agreement EULA

PLEASE READ THIS EULA CAREFULLY BEFORE USING ANY LBS SOFTWARE. BY USING ANY LBS SOFTWARE YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MUST NOT USE THE SOFTWARE.

### Application of this EULA

- 1 This EULA incorporates and supplements the LBS Terms & Conditions (General Terms and Conditions of Trading with LBS) ("Agreement") as updated from time to time. In the event of conflict between the terms of this EULA and the LBS Terms & Conditions, the LBS Terms & Conditions will prevail.

### General Use

- 2 The Software, Systems, interfaces, content, fonts, documentation and any data that is provided by LBS to the Customer under its Software licence (as may be updated or replaced by Software updates or System restore software provided by LBS whether in read only memory, on any other media or in any other form) are licensed to the Customer (for the number of licences purchased only) on a non-exclusive, revocable, non-transferable basis for the Customer to make reasonable use of the LBS System under the terms of this Agreement and not for any other purpose.
- 3 LBS retains ownership of the Software and reserves all rights not expressly granted to the Customer.
- 4 LBS at its discretion, may make available future updates to the Software for the Customer's Epos System.
- 5 The Customer shall carry out regular backups to removable media stored separately from the supported items and carry out other normal system housekeeping routines (disc defragging etc.). LBS shall not be liable for any loss or damage sustained or incurred by the Customer or any third party through loss or corruption of data resulting from any maintenance activity by LBS required or performed under this Agreement. LBS will use reasonable endeavours to rectify any such loss of data or programs, but reserves the right to charge for such services.
- 6 The Customer remains solely responsible for implementing adequate and industry standard virus protection measures to all parts of the LBS System.
- 7 Any additional software which is downloaded by the Customer, which is not already pre-installed on the System, is solely done at the Customer's risk.
- 8 The Customer is responsible for keeping the Software up-to-date and must accept automatic updates to the Software at all times. The Customer is responsible for keeping the operating system up-to-date with available patches and upgrades at all times.
- 9 From time to time LBS will deprecate older operating system versions, supporting Software or Hardware minimum specifications. LBS will use reasonable endeavours to give 60 days' notice in such circumstances and after this period the Customer must move away from any such deprecated Hardware, Software and/or operating systems at the Customer's expense.

### Permitted Software licence uses and restrictions

- 10 Each Software licence allows the Customer to use the Software on the specific point of sale terminals requested by the Customer at the point of purchase.
- 11 Each licence does not allow the Software to exist on more than one point of sale terminal, and the Customer must not make the Software available over a network where it could be used by multiple devices or multiple computers at the same time, unless otherwise agreed in writing by LBS.
- 12 This EULA does not grant the Customer any rights to use LBS proprietary interfaces or any other Intellectual Property Rights in the design, development, manufacture, licensing or distribution of third party devices and accessories for use with the LBS System. Except as and only to the extent expressly permitted in this EULA or by applicable law, the Customer must not copy,

## Terms and Conditions



decompile, reverse engineer, disassemble, and attempt to derive the source code of, decrypt, modify, or create derivative works of the Software (or any updates), the LBS Systems, or any part thereof. Any attempt to do so is a violation of the rights of LBS. If the Customer breaches this restriction, it may be subject to prosecution and damages.

13 The Customer may not rent, lease, lend, charge, redistribute or sub-license the LBS Software or Software updates.

### Termination

14 This EULA is effective until terminated in accordance with the Agreement. The Customer's rights under this EULA will terminate automatically without notice from LBS if the Customer fails to comply with any term(s) of this EULA. Upon the termination of this EULA the Customer's Software will be restricted.