

ELITEPOS PTY LTD

MAINTENANCE AND SUPPORT AGREEMENT

Contents

- 1. **Definitions**..... 3
 - 1.1 Releases and Patches 3
 - 1.2 Support Releases of the Product 3
- 2. Product Support Requirements 3
 - 2.1 **Term of Agreement**..... 3
 - 2.2 Support Requirements 3
 - 2.3 Maintenance and Support Commencement 3
 - 2.4 Maintenance and Support Service 4
 - 2.5 Maintenance and Support Procedures 4
 - 2.6 Services not covered under this Maintenance and Support Agreement 4
 - 2.7 Pricing and GST 5
 - 2.8 Limited Warranty..... 5
 - 2.9 Limitation of Liability 6
 - 2.10 Termination of this Agreement 6
- 3. **General Terms and Conditions** 6
 - 3.1 Confidentiality and Proprietary Information 6
 - 3.1.1 Proprietary Information Acknowledgement 6
 - 3.1.2 Confidentiality Obligation..... 7
 - 3.2 Variations of this Agreement 7
 - 3.3 Assignment, Novation and Subcontracts 7
 - 3.4 Severability 7
 - 3.5 Law..... 7
 - 3.6 This Agreement 7
- THE SCHEDULE..... **Error! Bookmark not defined.**

ELITEPOS PTY LTD MAINTENANCE AND SUPPORT AGREEMENT

1. Definitions

1.1 Releases and Patches

A Standard Release is defined as the latest version of ElitePOS of the ElitePOS software.

1.2 Support Releases of the Product

The Customer is entitled to an upgrade of a new Standard Release of the Product upon release by ElitePOS and is encouraged to always maintain a supported release. A list of currently supported releases is available upon request from ElitePOS.

Support may be available for retired releases but only on a time and materials basis and only as and when resource commitments allow. ElitePOS reserves the right to withdraw support of an older release of the product.

2. Product Support Requirements

2.1 Term of Agreement

The Customer agrees to pay for Support and Maintenance on these Terms and Conditions for a minimum period of twelve (12) months or monthly commencing on the date of execution of this Agreement by ElitePOS, after which time this Agreement shall automatically continue for further successive periods of twelve (12) months unless terminated by the Customer by notice in writing at least 21 days prior to any anniversary of the commencement of this Agreement.

2.2 Support Requirements

To receive support, the Customer will need:

- (a) A valid software licence for the Standard Release.
- (b) All customers must maintain a permanent high speed internet connection to allow remote software management specified by ElitePOS.
- (c) To provide ElitePOS access through the Customer's firewall using ElitePOS approved remote management software via a dedicated port for the specific purpose of maintenance and support.
- (d) A nominated key contact for support calls.
- (e) Email access to send and receive information regarding support calls raised with ElitePOS. These can be accessed at ElitePOS' Customer Web Portal:
.....

2.3 Maintenance and Support Commencement

The Customer must pay Maintenance and Support fees for the first year in advance commencing on the date of the signed licence agreement, or upon installation of the software whichever occurs first. Maintenance and Support fees for subsequent years must be paid in advance at least 14 days prior to the commencement of each subsequent annual term. The first annual Maintenance and Support fees are set forth in the Schedule.

2.4 Maintenance and Support Service

The annual fees for the Standard Maintenance and Support Service – Retail are set forth in Part A of the Schedule.

The annual fees for the 24 x 7 Maintenance and Support Service – Retail are set forth in Part B of the Schedule.

The customer may change the level of the Maintenance and Support Service by written notice to ElitePOS at least 21 days prior to the expiration of each year of the Term of this Agreement.

2.5 Maintenance and Support Procedures

All support calls are recorded on the ElitePOS Support System. Calls are logged and priority scheduled for response. The ElitePOS central data base keeps full historical data on all support calls for each Customer site.

Maintenance provides support and updates for Standard Releases of the Product. It includes:

- (a) Telephone/Online support for the Product. ElitePOS provides the Customer with online support from ElitePOS Business Solutions Customer Web Portal. Help with programs and operational assistance can generally be given with telephone or email correspondence.
- (b) Updates to the latest Standard Release of the Product are available on request. ElitePOS will publish release notes as they become available.

New Standard Releases may also require upgrades to third party hardware and software or other system components. The costs associated with any such upgrades are the responsibility of the Customer.

- (c) ElitePOS will use reasonable endeavours to rectify in a timely manner or find a resolution to problems found within the scope of the Product that is confirmed and identified as a new issue by ElitePOS.

The Customer may be instructed to update to a supported Release of the Product to have the problem resolved.

2.6 Services not covered under this Maintenance and Support Agreement

The following services may be available at quoted daily rates. In each case a minimum charge of one (1) hour will apply. All travel and out-of-pocket expenses including Airfares, Accommodation, Meals, Hire Car, Fuel, Tolls and Cab Charges related to these services are not covered by this Maintenance and Support Agreement and are payable by the Customer to ElitePOS within 30 days from the date of Invoice.

Services not covered by this Agreement include:

- (a) Systems analysis.
- (b) Business advice.
- (c) Programming.
- (d) Training.
- (e) On-site support.
- (f) System re-installation.
- (g) Operating system support.
- (h) Hardware support.
- (i) Network or communications support.
- (j) PC software support.
- (k) Restoration of data or services lost through factors beyond ElitePOS' control.
- (l) Data conversion or manipulation.
- (m) Forms alterations.
- (n) Customer data backups.
- (o) Performance tuning.

2.7 Pricing and GST

ElitePOS charges an annual Maintenance and Support fee in advance which covers software solution support and current patch updates.

ElitePOS will review the Customer Maintenance and Support fee amount annually and will provide notice in writing to the Customer for any increase, effective from the anniversary of the commencement of the term of this Agreement.

The amounts set out in this Agreement are exclusive of Goods and Services Tax ("GST"). If GST or any similar tax or charge applies to any supply of service made or provided under or in connection with this Agreement (including without limitation the supply or hire of any goods or the supply of any services, real property rights, benefits or any other thing to the Customer) ElitePOS may, in addition to any amount or consideration expressed as payable elsewhere in this Agreement, recover from the Customer an additional amount on account of GST, such an amount to be calculated by multiplying the amount, or consideration payable by the Customer for the supply or service, by the prevailing GST rates, any additional amount on account of GST recoverable from the Customer under this Clause, shall be calculated without any deduction or set off of any other amount and is payable by the Customer upon demand by ElitePOS whether such demand is by means of an invoice or otherwise.

2.8 Limited Warranty

ElitePOS and its resellers, do not warrant that the software solution or Maintenance and Support provided under this Agreement will be free of defects or that it will satisfy all of your requirements.

The Customer is solely responsible for the security of its information systems and networks, including its firewall and port access. ElitePOS does not warrant the security of the arrangements for the provision of online support.

Except as expressly provided by this Agreement, ElitePOS makes no warranty to any person in relation to Maintenance and Support or the Standard Release licenced to the customer, except to the extent that a warranty or condition cannot be excluded under law. To the extent that any warranty, condition or other liability cannot be excluded under the law, the

liability of ElitePOS for any loss or damage, including any economic or consequential loss shall be limited to, one of the following:

- (a) the supply of the Maintenance and Support or software solution again; or
- (b) a maximum amount not exceeding that paid by the Customer to ElitePOS for Maintenance and Support fees under this Agreement for the year of the Term in which any claim or series of related claims arise.

2.9 Limitation of Liability

ElitePOS, and its resellers, will not be liable for any loss or damage, whether as a result of negligence or otherwise, arising in relation to the performance of this Agreement, goods or services supplied under this Agreement, or the arrangements for the provision of online support under this Agreement. Loss or damage to which this clause applies includes any indirect or consequential loss including but not limited to loss of use, data, profits, business revenue, goodwill or anticipated savings, even though ElitePOS or its resellers were or ought to have been aware of the possibility of such loss or damage.

2.10 Termination of this Agreement

Unless terminated by the Customer by notice in writing not less than thirty (30) days prior to the anniversary of the commencement of Maintenance and Support under Clause 2.3, this Agreement will automatically renew every twelve (12) months.

Without limiting the generality of any other clause in this Agreement, ElitePOS may terminate this Agreement immediately by notice in writing if:

- (a) Any payment due from the Customer to ElitePOS pursuant to this Agreement remains unpaid for a period of fourteen (14) days after the due date.
- (b) The Customer breaches any Clause of this Agreement and such breach is not remedied within fourteen (14) days of written notice by ElitePOS.
- (c) The Customer ceases to hold a current software licence for the Standard Release, or is otherwise no longer capable of complying with its obligations under this Agreement.
- (d) The Customer becomes, threatens or resolves to become the subject to any form of insolvency administration or the Customer ceases to conduct its business.

3. General Terms and Conditions

3.1 Confidentiality and Proprietary Information

3.1.1 Proprietary Information Acknowledgement

ElitePOS and the Customer respectively acknowledge that in the course of the activities contemplated by the Agreement, each of them and their respective authorised personnel may be exposed to proprietary information of the other party.

The Customer hereby acknowledges, without limitation, that the Standard Release and all documentation and related materials constitute valuable proprietary information of ElitePOS.

ElitePOS hereby acknowledges, without limitation, that all financial data and information relating to the Customer constitutes valuable proprietary information of the Customer.

3.1.2 Confidentiality Obligation

Except as expressly authorised by this Agreement, or by law, or the written consent of the other party, each of the parties hereto shall, during the term of this Agreement, and subsequently, exercise efforts of a level not less comprehensive than the degree of discretion and measures normally used to protect their own proprietary information, to prevent the unauthorised use, reproduction dissemination or disclosure of the proprietary information of the other party.

3.2 Variations of this Agreement

ElitePOS may vary the Terms of this Agreement from time to time by providing to the Customer written notice of such changes not less than sixty (60) days prior to the effective date of the changes.

3.3 Assignment, Novation and Subcontracts

ElitePOS may sub-contract the performance or part performance of this Agreement. This Agreement shall not be dealt with in any way by the Customer (whether buy sub-licensing, novation, assignment or otherwise) without ElitePOS' written consent.

3.4 Severability

If any provision of this Agreement is held invalid or unenforceable, the provision will be deemed deleted to the extent that it is held to be invalid or unenforceable, and this Agreement will otherwise remain in full force.

3.5 Law

This Agreement shall be governed by the Laws of the State of New South Wales.

3.6 This Agreement

This Agreement supersedes all prior oral agreements, proposals or understandings, and any other communications between ElitePOS and the Customer relating to the subject matter of this Agreement.