

# Terms and Conditions

## General Terms and Conditions of Trading with Epos Now (Canada)

THESE TERMS & CONDITIONS SET OUT THE TERMS ON WHICH YOU SHALL BE BOUND IF YOU PURCHASE PRODUCTS AND/OR SERVICES FROM EPOS NOW. PLEASE READ THESE TERMS & CONDITIONS CAREFULLY AS THEY SHALL GOVERN OUR RELATIONSHIP WITH YOU

PLEASE READ THESE TERMS CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION.

Note that these terms and conditions do not apply to customers with a postal address in the United States, in relation to which applicable terms and conditions can be obtained from the USA link on our web site.

### 1. Parties

1. **EPOS NOW LLC.** Epos Now are responsible for providing a purchase and service that meets the agreements within the terms and conditions. Our registered office is Epos Now LLC, The Chase Plaza, 121-189 S. Orange Avenue, Florida, FL 32801, United States ("**Epos Now**"); and
2. **You** are the customer who has engaged Epos Now to purchase Products and/or Services on behalf of the business that you own or work for (the "**Customer**").

### 2. Definitions and Interpretation

1. The definitions and rules of interpretation in this clause apply in this Customer Contract ("**Agreement**"):

**Data Protection Laws:** means within Canada the Canadian Federal Law Personal Information Protection and Electronic Documents Act (S.C. 2000,c.5) (the "PIPEDA"), in the EEA the General Data Protection Regulation 2016/679 (GDPR) from 25 May 2018 and laws implementing or supplementing the GDPR (in the United Kingdom by the Data Protection Act 2018), and to the extent applicable, the data protection or privacy laws of the USA or any other country. 'Personal Data' shall have the meaning defined by the applicable Data Protection Laws;

**Device:** any single item of Hardware provided by Epos Now to the Customer;

**Hardware:** any hardware provided by Epos Now, including without limitation, point of sale terminals, receipt printers, cash drawers, CCTV and epos peripherals;

**Intellectual Property Rights:** any patents, copyright, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs (whether registered or unregistered) database rights, topography rights, moral rights, rights in confidential information (including without limitation, know-how and trade secrets) and any other intellectual property rights or industrial property rights, in each case whether registered or unregistered and including without limitation all applications for, and renewals or extensions of,

such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**Product:** any Hardware and/or Software;

**Professional Services:** means all projects that are scoped out under the name 'Professional Services' in an order or Statement of Work;

**Return to Base:** means that the Customer is required to send any Hardware with a fault or defect back to Epos Now's designated location to undertake testing of the Hardware;

**SAAS Plan(s):** means any software-as-a-service plan offered by Epos Now;

**Services:** the services to be provided by Epos Now to the Customer under this Agreement, as agreed by the parties in writing. This can include: support, maintenance and installation of the Products;

**Software:** any point of sale software provided by Epos Now for use with the Hardware or any third party hardware;

**Statement of Work:** a document entered into by the parties which incorporates the terms of this Agreement and provides further specifications for the Services;

**Support Plan:** the 'Standard' support plan or 'Premium' support plan for the maintenance and upkeep of the Software, as further detailed in clause 11;

**System:** the Epos Now applications, interfaces and technical systems, including any Software and any related manuals;

**Working Days:** Monday to Friday (excluding national public holidays); and

**Working Hours:** 9am to 5pm EDT on a Working Day.

2. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
3. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
4. A reference to "\$" or "\$CAD" is a reference to Canadian currency.
5. The terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms.
6. In the event of conflict between this Agreement and any Statement of Work, the Statement of Work shall prevail.
7. A reference to 'writing' or 'written' includes email unless stated otherwise.

### 3. Application of this Agreement

1. This Agreement shall apply to any Products and/or Services provided by Epos Now to the Customer (and shall be incorporated into any quotation or order for such Products and/or Services).
2. Any acceptance of a quotation or placement of an order by the Customer shall be treated as an offer to purchase the Products and/or Services from Epos Now and Epos Now shall have the right to reject such offers at any time.
3. This Agreement shall prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practise or course of dealing.
4. This Agreement incorporates and supplements the Epos Now Software End User Licence Agreement ("**EULA**") at Annex A (as updated from time to time). In the event of

conflict between the terms of this Agreement and the EULA, this Agreement shall prevail.

5. Notwithstanding any other provision in this Agreement, the duration of any Software licence (“**SaaS Period**”) and/or any Hardware rental period (“**Haas Period**”) shall be as agreed by the parties in writing.

#### 4. **Choosing a Product and Services from Epos Now**

1. Epos Now shall provide information about its Products and Services to help inform the Customer’s basis of its purchase and, if requested by the Customer, Epos Now may provide a full demo of its Software on a free of charge basis.
2. Notwithstanding clause 4.1, it is the sole responsibility of the Customer to ensure that the Product(s) and/or Services it is purchasing meet the Customer’s requirements.
3. Upon the Customer’s request, Epos Now shall promptly provide a written quotation for any Product(s) and/or Services. This quotation shall be a guideline price and does not form the basis of any contract between the Customer and Epos Now.
4. Any advice or recommendation given by Epos Now or its representatives to the Customer regarding the Services or the storage, application or use of the Products which is not confirmed in writing by Epos Now is followed or acted upon at the Customer’s own risk, and accordingly Epos Now shall not be liable for any such advice or recommendation which is not so confirmed in writing.
5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice, website or other document or information issued by Epos Now shall be subject to correction without any liability on the part of Epos Now.
6. The Customer shall assume the risk for the Products once they have been delivered to the delivery address specified in the Customer’s order. Risk in the Products shall only transfer back to Epos Now upon its physical receipt of the Products in the event that they are eligible to be returned in accordance with this Agreement.
7. Subject to sections 8 and 9 (where title remains with Epos Now at all times), title to any Products ordered by the Customer shall pass to the Customer upon Epos Now receiving payment in full for those Products.

#### 5. **Fees**

1. All Product and Service pricing is provided in ‘good faith’ by Epos Now. Unless stated otherwise in a quotation, written quotations are valid for 30 days from the date of their issue, however, some offers and discounts are subject to shorter timeframes. Where this is the case, the Customer shall be advised by Epos Now representatives and/or in Epos Now’s sales literature.
2. Pricing for our SAAS Plans and Support Plan charges (sections 11 and 12) will vary and pricing shall increase dependent upon: (i) number of Devices and (ii) number of locations that have an associated Device. In these terms and conditions any pricing given is to licence or support a single item of Hardware. In particular:
  1. Standard SAAS Devices are charged at \$CAD **49.00** per month per device
  2. Standard Support Devices are charged at \$CAD **55.00** per month per device
  3. Premium Support Devices are Charged at **\$CAD 75.00** per month per device
  4. Standard SAAS and Standard and Premium Support Trading Locations are charged at **\$CAD 20.00** per month per device
  5. Premium SAAS Devices are charged at \$CAD **95.00** per month per device
  6. Premium SAAS Locations are charged at **\$CAD 20.00** per month per device

3. The Customer shall reimburse Epos Now for any travel, subsistence and living expenses reasonably incurred for the performance of the Services, which Epos Now shall quote and agree in advance with the Customer where such expenses are reasonably foreseeable.
4. All invoices are due and payable by the Customer (or via a finance provider, where applicable) immediately upon receipt of the applicable invoice. The Customer acknowledges that no Products shall be dispatched, and no Services shall be provided, until payment of the applicable invoice is received by Epos Now in cleared funds.
5. All prices Epos Now quotes are exclusive of sales taxes (GST/HST) in force from time to time. Where GST/HST is payable by the Customer, this shall be added to the invoice in addition to the fees.
6. Without prejudice to any other right or remedy that Epos Now may have, if the Customer fails to pay Epos Now by the relevant invoice due date, Epos Now may:
  1. charge interest on such sum from the due date for payment at 4% per annum accruing on a daily basis and being compounded quarterly until payment is made;
  2. suspend the provision of the Services (including all of the Customer's access to the Software); and/or
  3. (where either sections 8 or 9 applies), the Customer shall hold the Products on a fiduciary basis and Epos Now shall be entitled at any time to require the Customer to 'deliver-up' the Products to Epos Now and, if it fails to do so, the Customer acknowledges and agrees that Epos Now may enter the Customer's premises or any third party premises where the Products are stored and repossess the Products.
7. The standard service offered by Epos Now shall include standard 'welcome' setup of the System and remote support (in accordance with the applicable Support Plan). Complimentary implementation training may also be offered and provided by Epos Now to the Customer (subject to availability), which shall consist of up to 4 hours of training, email and/or live chat support. Any additional Professional Services, further training, on-site support and/or custom work required shall be subject to a professional services fee (which shall be quoted on application) at the then current Epos Now day / hour rates. All Professional Services exclude travel, subsistence and living expenses, which shall be invoiced separately in accordance with clause 5.2.
8. All postage and packaging fees shall be charged to the Customer in addition to the fees for the relevant Products and Services at Epos Now's then current rates.

## 6. Customer Responsibilities

1. The Customer shall be responsible for installing the Hardware (unless otherwise agreed in writing with Epos Now) and shall keep the Hardware in the environmental conditions recommended by Epos Now and ensure that the external surfaces, cables and fittings of the Hardware are kept in good, clean condition.
2. The Customer shall ensure that the Hardware is only used by properly trained staff in accordance with Epos Now's instructions from time to time. The Customer shall ensure that only personnel authorised by Epos Now adjust, modify, configure, maintain, repair, replace or remove any part of the Hardware.
3. The Customer shall maintain adequate records of the use, maintenance and malfunction of the Hardware and shall provide Epos Now with such information and assistance concerning the Hardware, its application, use, location and environment as Epos Now may reasonably require to enable it to carry out the Support Plan.
4. The Customer shall immediately notify Epos Now if there is any failure of the Hardware or the System and shall allow Epos Now full and free access to the Hardware and all documentation, software, materials and services necessary for the provision of the

Support Plan. The Customer shall ensure that relevant trained and experienced staff are available when required by Epos Now to provide Epos Now with information required to diagnose and/or repair the issue.

5. It is the Customer's sole responsibility to operate regularly and verify a proper back-up routine, maintaining all back-up copies in a secure environment.
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. Epos Now shall not be responsible for any unauthorised access to the System by means of hacking, any unauthorised access of the Hardware with intent to commit or facilitate the commission of an offence or any unauthorised modification of the Hardware by a third party.
7. The Customer is responsible for ensuring that their login password to the Epos Now Systems 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.
8. The Customer shall not re-export any Hardware supplied under this Agreement.
9. The Customer is responsible for transactions between the Customer and the Customer's own customers ("End Customer"). Epos Now is not a party to such transactions and assumes no liability or responsibility for your products, services or offerings. Epos Now is not your bank, agent, or trustee or otherwise involved in the flow of funds or payments. Any payment dispute must be resolved between you and the End Customer. WITHOUT LIMITING SECTION 22 (LIABILITY AND DISCLAIMER OF CERTAIN WARRANTIES) OR SECTION 26 (LIMITATION OF LIABILITIES) BELOW, EPOS NOW MAKES NO WARRANTY AND ASSUMES NO RESPONSIBILITY OR LIABILITY FOR ANY DISPUTES, CHARGEBACKS, OVERCHARGES, DELAYED PAYMENTS, INSUFFICIENT FUNDS, EXPIRED CARDS, CIRCUMSTANCES BEYOND OUR CONTROL (INCLUDING WITHOUT LIMITATION POWER OUTAGES, SERVICE INTERRUPTIONS OR OTHERWISE) OR OTHER ISSUES RELATING TO TRANSACTIONS MADE THROUGH EPOS NOW PRODUCTS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW

## **7. Internet / Network Requirements**

1. Epos Now's Products 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 Epos Now 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.
2. The Customer must provide a separate physical network or a separate V-LAN for Epos Now systems. 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.
3. The Customer is solely responsible for any connection charges, line rental charges and call charges in relation to any Products.
4. Whilst Epos Now 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. Epos Now is not responsible for any slow responses to its Systems, including where this is caused by the Customer's poor internet / local network connection.

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.
  6. Where the System is to be used over wifi (e.g. tablets/mobile devices):
    1. the Customer is responsible for the setup, configuration and management of both the wifi infrastructure and the Customer devices. This includes ensuring wifi coverage in required areas and ensuring network dropouts due to wifi roaming are minimised; and
    2. the Customer must be mindful that wifi is not as robust as a wired network and network dropouts can occur due to wifi coverage, access point roaming, tablet sleep modes as well as other environmental factors. This is not unique to Epos Now Systems and should be considered when selecting a wifi solution.
  7. Epos Now Systems 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.
  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.
- 8. Hardware as a Service (Monthly Fee: Hardware without up-front costs)**
1. Epos Now offers a monthly fee subscription option for the provision of the Products, whereby it shall supply Hardware and/or Software solutions without any upfront cost. This includes CCTV integration. For this option, fees are charged on a monthly basis with a minimum contract term equal to the HaaS Period ("**Subscription Contract**").
  2. If the Customer cancels the Subscription Contract within the HaaS Period, or in accordance with clause 8.3.3 below, it must return any Hardware it has received and pay the remaining balance for the remainder of the HaaS Period. This is calculated by multiplying the number of months outstanding by the applicable monthly fee.
  3. At least 90 days prior to the end of the HaaS Period the Customer shall notify Epos Now of its choice to either:
    1. upgrade the Hardware where applicable and continue payment under the Subscription Service at the same rate (unless notified to the Customer by Epos Now from time to time in accordance with these terms). This shall be for a further fixed period equal to the HaaS Period. All rights relating to Product warranties and the Swap It service shall continue to apply to the Hardware; or
    2. keep the current Hardware and continue payment under the Subscription Service at the same rate (unless notified to the Customer by Epos Now from time to time in accordance with these terms). The rental of the Hardware under this option shall be on a rolling monthly basis, which may be cancelled at any time by the Customer providing Epos Now with at least one month's prior written notice. All rights relating to Product warranties and the Swap It service shall continue to apply to the Hardware; or

3. cancel the Subscription Contract with effect from the end of the Subscription Contract term, and if the Customer fails to notify Epos Now within this 90 day period, clause 8.3.2 shall apply as the default position.
4. Subject to clause 8.2, either party can terminate the Subscription Contract at any time by providing the other party with at least 30 days' prior written notice.
5. For the avoidance of doubt, title to the Products shall not pass to the Customer at any point under the Subscription Contract option and Epos Now shall remain the owner of the Products at all times.
6. The Customer must arrange the safe return of Hardware within 10 Working Days of the end of the Subscription Contract.
7. If the Products are not returned, after a period of 10 Working Days from the end of the Subscription Contract (or any earlier date where termination takes place during the HaaS Period) that Epos Now has not received the Hardware, Epos Now shall charge an additional sum of \$CAD 75 (excluding GST/HST).

## 9. Product Rental

1. Epos Now may offer the ability to rent the Products from Epos Now and where this is possible, it shall notify the Customer of the rental period, and the applicable fees for that period.
2. On acceptance of an order, a deposit per point of sale terminal shall be taken in addition to the first month's rental fee. If the rental period is greater than one month, the subsequent payments shall be due in one month intervals, starting from the first date of the rental period.
3. Epos Now shall remain the owner of the Products and shall retain title in them at all times.
4. It is the Customer's responsibility to ensure that the Hardware is maintained and returned in the same condition as it was dispatched (fair wear and tear excepted)
5. The Customer must arrange the safe return of Hardware within five Working Days of the end of the rental period.
6. Epos Now will not normally use a courier to collect Hardware and the customer shall take reasonable steps to document the condition of the Hardware before return.
7. For each day after the five Working Days from the end of the rental period that Epos Now has not received the Hardware, Epos Now shall charge an additional sum of \$CAD 25 (excluding GST/HST) up to a total maximum equivalent of the new cost of the Hardware.
8. Upon return of the Hardware, Epos Now shall inspect the Hardware and compile a report. Based on the report, a full refund of the deposit may be made, less any adjustments. If the Customer is eligible for a return of the deposit, this payment shall be made within 14 Working Days of receiving the returned Hardware.
9. If the Hardware is returned in a damaged condition where the cost of repair or replacement exceeds the value of the deposit, Epos Now retains the right to invoice the Customer for an additional sum to cover the damage exceeding the value of the deposit. The Customer must pay this sum within 14 days of the date of the applicable invoice.
10. If the Hardware is not returned after 28 days after the rental period, Epos Now shall withhold the entirety of the deposit and invoice the Customer for the remaining value of the Products and any charges outstanding. This must be paid within 14 days of the date of the applicable invoice.
11. The Hardware rental does not include any ongoing services or consumables (e.g. support, applications or peripheral hardware such as USB scanners), but these are available on request (subject to agreed fees).

## 10. Annual Software Licence Fee

1. Unless the Customer has opted to purchase a Support Plan, the Customer shall be charged for a Software licence annually.
2. The annual Software licence provides the Customer with:
  1. use of the Software for a minimum 12 calendar months;
  2. maintenance and operating costs of the Epos Now servers; and
  3. selective System updates, improving the running and functionality of the Software.
3. The first year of the Software licence is included within the price of purchasing the Software.
4. The annual Software licence fee is for each separate point of sale terminal (as updated from time to time).
5. Payment of the Software licence is due on the anniversary of the original account activation for each point of sale terminal.
6. The Software licence fee is non-negotiable and is non-refundable in the event that this Agreement is terminated.
7. The Software licence shall apply for a minimum period of 12 months (“**Initial Term**”) and shall automatically renew for further 12 month periods (each a “**Renewal Period**”) unless and until a party provides the other party with written notice to cancel the Software licence at least 30 days before the start of the next Renewal Period, which shall take effect no earlier than the end of the Initial Term or the end of the then current Renewal Period. Upon the start of each Renewal Period, the Customer shall be charged for the Software licence fees (at the then current rates) via the original billing method.
8. The Customer acknowledges and agrees that upon the annual Software licence renewal date, the Customer shall be required to upgrade to the then latest version of the Epos Now Software platform.

## 11. Support Plan

1. Epos Now offers two optional Support Plans:
  1. Standard Support, which shall include:
    1. the annual Software licence fee;
    2. access to the Epos Now support team during Working Hours;
    3. remote technical and support from Epos Now’s UK call centre;
    4. Software updates;
    5. email support;
    6. encrypted backup of transaction data;
    7. warranty upgraded from ‘Return to Base’ to ‘Swap It’ pursuant to clause 15; and
    8. remote training for all Customer staff.
  2. Premium Support, which shall include the contents of the Standard Support Plan and:
    1. 24 hour telephone support; and
    2. priority email support.
2. The Customer can upgrade to a Support Plan at any time either through the ‘Back Office’ of the System using its log-in credentials, or by contacting Epos Now. If the

Customer is already part-way into a Standard Support Plan contract, this existing contract shall be cancelled and replaced by the Premium Support contract.

3. Where the Customer has paid for a Standard Support Plan contract and wishes to upgrade to a Premium Support Plan, the remaining term of the Standard Support Plan shall be discounted from the Premium Support plan's payment on a pro rata basis. The Premium Support Plan contract shall continue for at least one year from the date of taking out the Premium Support Plan.
4. All Support Plans are contracts for 12-month periods and are governed by the terms of this Agreement.
5. The Customer can choose to either pay the Support Plan annually in advance or on a monthly basis. Where the Customer chooses to pay for the Support Plan on a monthly basis, it must provide recurring payment details either through direct debit or a credit or debit card. Payments are due each month, on the same day of the month that the Support Plan was purchased.
6. Epos Now shall attempt to take the payment each month through its payment providers. Where a payment fails, Epos Now shall attempt to take the payment again. If a payment continues to fail, Epos Now retains the right to restrict access to the Epos Now Software for all of the Customer's licenses, locations and devices until all outstanding payments are made in full.
7. If the Customer wishes to cancel its Support Plan part-way through the annual contract, it shall be liable to pay a charge calculated by multiplying the number of months remaining on the contract by the monthly payment.
8. Epos Now reserves the right to increase the Support Plan fees at any time upon providing the Customer with at least 30 days' notice in advance. Should the Customer not agree to the Support Plan fees, the Customer may cancel the Support Plan and receive a pro rata refund for any unused proportion of the Support Plan fees after the effective date of termination that have been paid in advance.
9. If the Customer has a Support Plan but uses third party hardware, Epos Now shall use reasonable endeavours to resolve any software compatibility issues, but any hardware maintenance issues shall be the Customer's sole responsibility.
10. All Support Plans shall cover up to a maximum of three devices in one location (i.e. a single retail premises with a unique postal address). Beyond either of these limits the Customer shall need to purchase an additional Support Plan. The Customer agrees to notify Epos Now immediately if at any time after the commencement of the Support Plan the above limits are exceeded. Epos Now reserves the right to invoice retrospectively the cost of any additional Support Plan where the Customer has exceeded the allowance under this paragraph.

## **12. Support Plan Renewal & Cancellation**

1. After one year (and each subsequent year), the Customer's Support Plan shall automatically renew for another year unless the Customer advises Epos Now before the renewal date that it does not wish it to renew.
2. The Customer has a 30 day cooling-off period after the automatic renewal date in which to notify Epos Now that it does not wish to continue the Support Plan, Epos Now shall cancel the Support Plan contract with no penalty to the Customer.
3. To continue to use the Epos Now Software after cancellation, the Customer must either pay the annual Support Plan licence fee or sign up to another Support Plan.
4. Epos Now may also choose to end the Support Plan contract at any time if Epos Now discontinues the Support Plan.

## **13. ProtectNow Care Plan**

1. Epos now provisions a care plan subscription for the PRO Product Range which requires one subscription for each individual 'solution product'. Solution products exclusively include the Lite, Base, Plus and Pro product bundles and the 21.5" Kitchen Display Screen.
2. Products covered by the ProtectNow Care Plan can be varied/added/removed at any time without notice by Epos Now at its sole discretion. In the event, a product attached to the customers plan is no longer covered the customer shall have the right to early termination of the remaining contract of the ProtectNow Care Plan. This early termination right does not extend to any other contracts or services the customer has ongoing with Epos Now Ltd.
3. The ProtectNow Care Plan is charged per month per solution or kitchen display screen purchased on a fixed contract of 36 months from point of sale of each solution or kitchen display screen.
4. Under the care plan you are entitled to a maximum of two instances of accidental damages in each 36 month period, whilst the care plan is still active.
5. Whilst active, dependent on the covered this Care plan covers you for:
  1. Two instances of accidental damage for any products within our Pro Product Range, that have the PRO title affixed to them
6. The Care Plan shall not cover you for:
  1. Third Party Products
  2. Epos Now Products outside of the Pro Product Range.
7. Where damage found is accidental, you shall be required to pay an excess for any replacements covered in the care plan, the excess is priced at \$CAD 99.00 in Canada.
8. You are not required to purchase any other Support Plan in order to purchase the ProtectNow Care Plan

#### **14. ProtectNow Renewal & Cancellation**

1. The minimum term for the ProtectNow Care Plan agreement is 36 months. Cancellation or failure to pay within the contracted period shall be subject to an early termination fee to the amount equal to the outstanding balance on the contract.
2. Epos Now reserves the right to charge late payment fees in the event of failed payments. This right is at the sole discretion of Epos Now.
3. Care Plan bundles, shall automatically renew for a 36 month period, if the customer does not cancel the contract with 30 days notice prior to the end of the previous 36 month period.
4. If a ProtectNow plan is canceled after the 36 months, it cannot be repurchased for the same devices and all remaining / unused accidental damages rights shall be forfeited.
5. If a customer purchases additional solutions listed in the coverage of the ProtectNow Care Plan these shall be covered by a separate 36 months term and shall form part of an additional separate contract. The original ProtectNow plan for the other previously purchased device shall not see any change to the remaining contract length.

#### **15. Failing to Secure a Payment Plan**

1. For Customers purchasing our Pro Solution 1st February 2020, there shall be a maximum 60 day period starting from point of sale to secure, activate and integrate a contract with one of our payment service providers.

2. If the acceptance requirement is not met or the customer chooses not to proceed with integrated payments the customer shall default to a Non-Integrated Payment Premium of \$CAD 29 per month per Pro Solution purchased at the above rate. Note:
  1. This payment shall be collected monthly using the same payment method as your support payment.
  2. Payments shall continue until cancelled within 30 days written notice but are required for the remaining term of your fixed contract.
3. For Customers purchasing a Plus or Base Solution which includes the commitment of securing a payment services contract between 1st November 2019 and 31st January 2020, there shall be a maximum 90 day period from point of sale to secure, activate and integrate a contract with one of our payment service providers.
4. For Customers purchasing a Plus or Base Solution which includes the commitment of securing a payment services contract from 1st February 2020, there shall be a maximum 60 day period from point of sale to secure, activate and integrate a contract with one of our payment service providers.
5. If this requirement is not met and you have taken support, you shall default onto the ProtectNow Care Plan at a cost of \$18 per solution purchased. This shall trigger the terms set out for the ProtectNow Care Plan.
6. If this requirement is not met and you have taken the ProtectNow Care Plan, you shall default to the Standard Support Plan at a cost of \$50 instead of an integrated payments contract. This is for a minimum 12-month term.
7. In the absence of a Support plan or ProtectNow Care Plan being active on the Base plan the Non-Integrated Payment subscription shall be taken from the method used at the original point of sale. The payment method can be updated to one of the customer's choosing at their written request.
8. Customers who purchase a Pro Solution with the Payment Premium can upgrade their account at any time:
  1. By securing, activating and integrating a Payments Solution
  2. Epos Now shall deduct the Payment Premium Charge multiplied by the number of connected devices. This purchase shall be subject to the minimum terms outlined under the Fixed Terms schedule.

## **16. Delivery of Hardware**

1. Whilst Epos Now takes reasonable care to ensure the Hardware packaging prevents any damage to the Hardware in transit, it is the Customer's responsibility to check the Hardware before it accepts the Hardware at the time of delivery.
2. It is the Customer's responsibility to document, and notify Epos Now of, any defects in the cosmetic condition of the Hardware within 24 hours of receiving the Hardware.
3. Provided clause 16.2 has been complied with, in the rare occasion that the Hardware is faulty or damaged on arrival, Epos Now shall provide the Customer with replacement Hardware.
4. Whilst Epos Now shall use reasonable endeavours to deliver the Hardware by the date specified in the Customer's order, Epos Now shall not be liable for the delay in delivery from any cause whatsoever and howsoever arising and time shall not be of the essence for delivery.
5. All deliveries must be signed for by the Customer or its authorised representatives. Epos Now's third party delivery company may notify the Customer the timeframe when the Customer should expect the delivery by email and/or text message. It is the responsibility of the Customer to provide Epos Now with the correct address, email and mobile number to benefit from this Service.

6. It is the responsibility of the Customer to have an appropriate and authorised person available to sign for the delivery of the Hardware. Epos Now is not responsible for any deliveries that cannot be made due to an authorised person not being available to receive the Hardware, or its delivery company not having access to the delivery location.
7. Epos Now does not deliver to P.O. Box addresses or to the whole extent of Canadian territory. You must have a valid shipping address located in Canada.

#### 17. Epos Now Hardware Warranty

1. Subject to clause 17.5, in relation to any new Hardware purchased directly from Epos Now, and that is manufactured by Epos Now, Epos Now warrants that such Hardware shall be of good, satisfactory quality and free of any material defects for a period of 12 months from the date of the delivery of the Hardware to the Customer.
2. Subject to clause 17.5, in relation to any refurbished Hardware purchased directly from Epos Now, Epos Now warrants that such Hardware shall be of good, satisfactory quality and free of any material defects for a period of 90 days from the date of delivery of the Products, unless it is sold as 'like new' where it shall have a warranty period of 12 months from the date of the delivery of the Products.
3. Each of the 12 month long warranties under clauses 17.1 and 17.2 are "**Limited Warranties**".
4. The Customer may choose to purchase an "**Extended Warranty**" within the Limited Warranty period. This Extended Warranty confers the same rights as the Limited Warranty, but shall apply for a period of three years from the date of the original delivery of the Products to the Customer.
5. Notwithstanding the above clauses, the warranties stated in this clause 17 shall not apply to:
  1. any third-party hardware. Third-party hardware is any hardware that is not manufactured by Epos Now, or any Hardware which is not branded with the Epos Now name and/or logo;
  2. any Hardware that has been tampered with, repaired and/or modified by non-authorised personnel;
  3. any Hardware where the warranty seals have been broken or altered;
  4. any damage (accidental or other) to the Hardware 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;
  5. any damage to the Hardware 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;
  6. any damage to the Hardware caused by improper installation, connection or malfunction of a peripheral device such as a printer, optical drive, network card, or USB device;
  7. any damage to the Hardware through the Customer's neglect to protect the Hardware, Software or System from viruses;
  8. any damage to the Hardware caused by an external electrical fault or any accident;
  9. fraud, theft unexplained disappearance or wilful acts;
  10. liquid or fluid damage or contamination of any kind; or

11. 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 Epos Now Software.
6. If the Customer believes that the Hardware contains a fault that is covered by the warranties provided herein, the Customer must report the issue to Epos Now in writing within the applicable warranty period and, at the Customer's expense, return the item to Epos Now for inspection. Within 28 days of receiving the Hardware in question, Epos Now shall examine the item and if covered by the warranty, at Epos Now's discretion, Epos Now shall either replace the Hardware with one of similar performance and capabilities or repair the Hardware. If a device fails outside of the first 30 days of original purchase, Epos Now retains the right to replace or repair the Hardware with refurbished or remanufactured parts. If Epos Now determines that the Hardware is outside of the warranty rights, Epos Now shall, at the Customer's request, prepare a quote for repair or replacement of the item in question. The Customer can then choose to pay for the repair or replacement or to have its original Hardware returned to it (at the Customer's expense).
7. Where Epos Now replaces or repairs Hardware under warranty, or as a chargeable out of warranty service, the repaired or replacement Hardware inherits the remaining warranty period from the original Hardware. If the original Hardware has less than 30 calendar days of warranty remaining, the replacement or repaired Hardware shall receive a warranty of 30 calendar days.
8. If any new Hardware fails within the first 30 days of its original purchase, and is covered by a warranty, Epos Now shall replace the device with new Hardware, at Epos Now's expense.

#### **18. Swap It service**

1. If the Customer has purchased a Support Plan, and where the Hardware is covered by a Limited Warranty or Extended Warranty, the Customer is entitled to have its Return to Base warranty upgraded to the Swap It service.
2. If the Customer notifies Epos Now prior to 3.00pm (EDT) on a Working Day of a fault with the Hardware, Epos Now shall arrange the same day for replacement Hardware (of a similar specification to the original) to be sent by express delivery (normally two to three working days). A courier service may be available in the Greater Toronto Area.
3. When a courier delivers the replacement Hardware, they shall collect the failed Hardware. The courier shall not leave the replacement Hardware without taking away the failed Hardware. The courier shall allow a maximum of 15 minutes for the replacement to occur. It is not possible to arrange a specific time of day for the replacement to occur.
4. If Epos Now is notified of the need for a Swap It after 3.00pm (EDT) or on a non-Working Day, the arrangements for the replacement Hardware shall be made on the next working day.
5. The Swap It service is only available for valid addresses located within Canada. Epos Now does not deliver to P.O. Boxes nor to all areas of Canada.
6. The Swap It service is not available on Hardware for which there is no Epos Now warranty, for example third-party products not manufactured by Epos Now.
7. If Hardware fails outside of the first 30 days of original purchase, Epos Now retains the right to replace or repair the Product with refurbished or remanufactured parts.
8. The Customer, wherever possible, must also provide the serial number of the Hardware to be swapped when requested by an Epos Now support agent. Failure to do so may result in a refusal of the Swap It case.
9. When Hardware is returned to Epos Now via a Swap It, Epos Now shall inspect the device to ensure that it should be replaced under warranty. Epos Now only offers the

Swap It service to Hardware that is covered by an Epos Now warranty. Whilst Epos Now tries to validate the warranty status before agreeing to perform a Swap It, there are occasions where Epos Now perform a Swap It on Hardware that are not covered by warranty. If it is found to be out of warranty Epos Now reserves the right to raise an invoice, due immediately, for the Customer to pay the replacement cost.

10. Hardware can be out of warranty for many reasons, including (but not limited to):
  1. the warranty period has expired;
  2. any of the circumstances of clause 14.5 apply; or
  3. improper or insufficient cleaning and maintenance.
11. If the Hardware returned is found to be in working condition but in a poor and unreasonable state of cleanliness, the Customer shall be billed for cleaning the Hardware at a fixed rate per item.

#### **19. Refunds and return of the Products**

1. No return or refund shall be issued by Epos Now unless the complaints procedure outlined in clause 20 is followed.
2. The Software licence fee is strictly non-refundable.
3. Any returned Products should be packed in the original packaging, with all boxes, leads, discs, adaptors and manuals. Epos Now reserves the right to charge for any damages caused in transit due to poor packaging.
4. Epos Now Systems and Software sales are excluded from the standard returns policy due to the considerable costs in configuration, personalisation, training and dispatch. These items are strictly non-refundable.
5. Any money paid to third parties for any modifications made to the Software at the Customer's request shall also not be refunded to the Customer.
6. Epos Now shall not process a return where any of the following apply:
  1. Customer or staff training needs, i.e. where the Customer is not currently understanding or using the System properly;
  2. the Customer's problem arises through not properly researching or qualifying the purchase;
  3. functions that are not present or work differently than other products available in the market;
  4. compatibility with third party items/systems;
  5. Products that have been dispatched, configured, personalized and used;
  6. the Customer shutting down the business or where the Product is surplus to requirements after delivery;
  7. orders that contain bespoke or custom equipment;
  8. operational problems that arise from the Customer's internet connection / local network or other environment problems that are out of Epos Now's control;
  9. the Customer accidentally damaged the Products after delivery;
  10. the Customer or a third party has misused the Products and damaged them;
  11. the Customer or a third party has tried to open or tamper with the Hardware in some way;

12. the Customer no longer requires the Hardware and the Customer has personalized it;
  13. if the item is sold as faulty via Epos Now's auctions or clearance;
  14. if the item is part of a custom or large order;
  15. the item is not returned in its original packaging;
  16. the Customer has not paid the annual Software licence fee; or
  17. the Products are not in 'as new' condition upon their purchase by the Customer.
7. Epos Now shall assess the return request by using the following process:
1. Epos Now shall use reasonable endeavours to understand why the Customer feels the Product is 'unfit for purpose' and attempt to reasonably resolve any issues when highlighted by the Customer via remote desktop;
  2. Epos Now shall attend the Customer's business premises if the situation cannot be resolved remotely to perform a site survey and on-site training or repair. This may be subject to a charge; and
  3. once the issue is identified, Epos Now must be given reasonable time to resolve the issue (and with the Customer's assistance (where applicable) to do so).
8. The Customer is responsible for the delivery of the Products back to Epos Now at the Customer's expense, and only after the Products have been checked by an engineer of Epos Now, shall any payment be agreed upon and released. Reasonable return costs (at the cheapest available rate) shall be refunded by Epos Now where a fault is identified.
9. Refunds shall only be made after reasonable endeavours have been made by Epos Now to resolve the issue.
10. In the event of a return, refunds, credit notes and exchanges can only be made to the card account or business/person that made the order originally, and these shall be processed within 28 days of the item's return to Epos Now.
11. For any payments made through a finance company, Epos Now is only able to refund any amounts due via the finance company's instruction in writing.
12. Any amounts paid for on-site installations, product imports, support payments, postage, module integrations and repair and labor cost are non-refundable.

## **20. Complaints Procedure**

1. Epos Now endeavours to ensure that all Customers are satisfied with their purchase, however, where problems arise the Customer commits to following the complaints procedure in this clause.
2. If the Customer is not entirely satisfied with the Products and/or Services, its first action should be to contact the Epos Now support team. Contact details are available at [www.eposnow.com/uk/contact-us](http://www.eposnow.com/uk/contact-us).
3. If the issue has not been satisfactorily resolved, the Customer should then make a written complaint by email to [customerrelations@eposnow.com](mailto:customerrelations@eposnow.com)
4. Written complaints should include full details of the situation and the nature of the Customer's complaint. Additionally the Customer should ensure that it provides the best contact details to reach them on.

5. Epos Now shall respond to the initial written complaint within two Working Days, confirming that Epos Now has received the Customer's complaint and advising the Customer of which Epos Now manager shall be managing the resolution.
6. The assigned manager shall endeavour to resolve the Customer's complaint as quickly as possible, working with the Customer to understand all aspects and come up with a proposed resolution where a fault is identified.
7. Once the proposed resolution is understood, the assigned manager shall write to the Customer documenting the resolution and rationale behind the decision.
8. Should the Customer still not be happy with the resolution provided, the Customer should contact the assigned manager and notify them that it wishes to escalate the complaint further. No claim shall be valid unless the Customer firstly follows the above process.
9. All sales are bound by the terms of this Agreement and Epos Now asks that the Customer reads the full Agreement before raising a complaint. Please note that this is a business-to-business transaction and is therefore to the full extent permitted is not governed by consumer laws.
10. PLEASE NOTE: Epos Now does not tolerate any abusive, offensive or inappropriate behaviour or intimidation towards its staff. In the event that the Customer does not treat Epos Now's staff in a courteous and professional manner at all times, Epos Now reserves the right to cease all correspondence with the Customer and provide this as evidence of non-cooperation and bad faith in any subsequent legal proceedings.
11. Class Action. WITH RESPECT TO ALL PERSONS AND ENTITIES, REGARDLESS OF WHETHER THEY HAVE OBTAINED OR USED THE PRODUCT FOR PERSONAL, COMMERCIAL OR OTHER PURPOSES, ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR SIMILAR, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING.

## **21. Intellectual Property Rights**

1. All Intellectual Property Rights and all other rights in the Products shall vest and remain vested in Epos Now.
2. All Customer data (including but not limited to transactional data, sales data, product data and stock data) are owned by the Customer.
3. The Customer hereby provides Epos Now 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 Epos Now System for the enhancement of existing services and the provision of new services for Epos Now, its customers and partner organisations. For the avoidance of doubt, any personally identifiable information shall be anonymised and/or aggregated.
4. The Customer acknowledges that it shall not acquire any Intellectual Property Rights in the Hardware and that it shall have no rights in or to the Intellectual Property Rights in the Software other than as set out in the EULA at Annex A.
5. The Customer agrees not to remove deface or cover up any name plates, logos or trade marks appearing on the Products.
6. The Intellectual Property Rights in the Products supplied by Epos Now may be owned by third party suppliers. Where Epos Now 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 shall be conditional upon, the Customer agreeing to an end-user licence (or sub-licence) of such rights directly with the relevant licensor.

7. PLEASE NOTE: The Customer's historic stock data, which is stored by Epos Now expressly for use in the Stock History report in the back office, shall only be stored for one year and it shall be deleted at the end of this period. Epos Now recommends that the Customer exports this data from the stock history report from time to time to avoid any loss of data.

## 22. Liability and disclaimer of certain warranties

1. This clause sets out the liability of each party under this Agreement and its Annexes.
2. All warranties, conditions and other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
3. Nothing in this Agreement limits or excludes the liability of either party for death or personal injury which results from negligence or for any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party.
4. Subject to clause 22.3 and excluding any provisions in this Agreement where an indemnity is provided by either party:
  1. neither party shall be liable for loss of profits, loss of business, depletion of goods and/or similar losses, pure economic loss, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
  2. each party's total liability to each other party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with this Agreement shall be limited to the price paid or payable for the relevant Products and/or Services provided to the Customer by Epos Now giving rise to such liability.
5. THE PRODUCT IS NOT INTENDED TO PROVIDE PROFESSIONAL ACCOUNTING, TAX OR OTHER ADVICE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW EPOS NOW EXPRESSLY DISCLAIMS ANY WARRANTY THAT USE OF THE PRODUCT SHALL ENSURE YOUR COMPLIANCE WITH ANY ACCOUNTING STANDARDS OR LEGAL OR REGULATORY OBLIGATIONS OR THAT THE RESULTS OF THE PRODUCT SHALL BE ACCURATE OR SUFFICIENT FOR YOUR PURPOSES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW THERE IS NO WARRANTY THAT THE PRODUCT SHALL BE ERROR FREE, THAT ACCESS SHALL BE CONTINUOUS OR UNINTERRUPTED, THAT ANY INFORMATION PROVIDED OR USED WITH THE PRODUCT SHALL BE SECURE, ACCURATE, COMPLETE OR TIMELY, OR THAT ANY CUSTOMER DATA SHALL BE PRESERVED OR MAINTAINED WITHOUT LOSS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW EPOS NOW SHALL NOT BE LIABLE FOR ANY PRODUCT FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF EPOS NOW. YOU MAY HAVE OTHER STATUTORY RIGHTS; HOWEVER, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW

## 23. Confidentiality

1. A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed (either orally, in writing or by demonstration) to the Receiving Party by the other party ("**Disclosing Party**") or its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's

business, its products and services which the Receiving Party may obtain (“**Confidential Information**”).

2. In relation to any Confidential Information received from the Disclosing Party or from a third party on behalf of the Disclosing Party, the Disclosing Party and the Receiving Party agree:
  1. to treat the Confidential Information in confidence and to use it only for the purpose of discharging the Receiving Party’s obligations under this Agreement;
  2. not to disclose the Confidential Information to any third party without the express written permission of the Disclosing Party (except that the Receiving Party may disclose the Confidential Information to its officers, employees, consultants, agents and sub-contractors who need access to the Confidential Information in connection with discharging the Receiving Party’s obligations under this Agreement and provided that such officers, employees, consultants, agents and sub-contractors are made aware of the confidential nature of the Confidential Information and are subject to confidentiality obligations at least as onerous as those set out in this Agreement); and
  3. to treat the Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the Receiving Party uses to maintain its own confidential or proprietary information.
3. Nothing in this Agreement shall prevent the Receiving Party from using or disclosing any Confidential Information which:
  1. is in or comes into the public domain in any way without breach of this Agreement by the Receiving Party or any person or entity to whom it makes disclosure;
  2. the Receiving Party can show was: (i) in its possession or known to it by being in its use or being recorded in its files prior to receipt from the Disclosing Party and was not acquired by the Receiving Party from the Disclosing Party under an obligation of confidence; or (ii) to have been independently developed by the Receiving Party without reference to the Confidential Information;
  3. the Receiving Party obtains or has available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use;
  4. is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
  5. is required by law to be released (e.g. by a court order), provided that, when permitted by the applicable law, the Disclosing Party is given as much prior written notice as possible of such request.
4. This clause 24 shall survive termination of this Agreement, however arising.

#### **24. Data Protection**

1. General Obligations. Each party shall ensure that in the performance of its obligations under this Agreement it shall at all times comply with all applicable Data Protection Laws and any other applicable privacy laws and regulations. The personal information relating to natural persons is covered by the Canadian Federal Law Personal Information Protection and Electronic Documents Act (S.C. 2000, c. 5) (the “PIPEDA”), the EU General Data Protection Regulation EU 2016/679 for countries in the EEA and in the USA by federal and state laws.
2. Data Specification: The Customer must provide Epos Now with a document setting out the (a) subject matter and duration of any processing to be undertaken by Epos Now; (b)

the nature and purpose of the processing; and (c) the type of Personal Data and the categories of data subject relevant to this Agreement.

3. Data Controller. The Customer acknowledges and agrees that it shall be the Data Controller under this Agreement and that it shall be responsible for adequately addressing the use of cookies and data protection obligations in its end-customer / Customer Terms & Conditions and policies. As Epos Now does not have any control over the Customer's data protection notices, policies and Terms & Conditions, the Customer shall indemnify and keep Epos Now and its Affiliates indemnified against all losses, costs, and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by Epos Now arising out of or in connection with any claim in respect of: (a) a breach of clause 24.1, 24.2 or 24.3; or (b) any liability arising whatsoever in respect of the cookies on, or the capture of Personal Data through, the Customer's website(s).
4. Data Processor. Epos Now acknowledges and agrees that it shall be the Data Processor under this Agreement and that it shall: (a) keep all Personal Data it receives, stores and collects from the Customer strictly confidential (pursuant to clause 23 (Confidentiality)), and not disclose any Personal Data to third parties; (b) not use the Personal Data for any purpose other than to perform its obligations under this Agreement; (c) ensure that all Personal Data it receives, stores and collects from the Customer is processed in accordance with this Agreement or as otherwise instructed in writing from time to time by the Customer and Epos Now shall not process the Personal Data for any other purpose, unless required by law to which Epos Now is subject, in which case Epos Now shall to the extent permitted by law inform the Customer of that legal requirement prior to responding to the request; (d) promptly carry out any written request requiring Epos Now to amend, transfer or delete the Personal Data or any part of the Personal Data made by the Customer during this Agreement; and (e) notify the Customer without undue delay or in any case within 48 hours upon Epos Now or any sub-processor becoming aware of a breach affecting Personal data and at this time providing the Customer with all sufficient information required to meet any obligation to notify the relevant data protection authority or inform affected individuals under applicable Data Protection Laws.
5. Assistance. Epos Now agrees to assist the Customer with all subject access requests which may be received from an end-customer in a prompt timeframe (at the Customer's cost) and ensure that appropriate technical and organisational measures are in place to enable the Customer to meet its obligations to those requesting access to Personal Data held by Epos Now. Upon request, Epos Now shall provide you with reasonably requested information within a reasonable timeframe to demonstrate its compliance with this clause 21. Epos Now shall assist the Customer in relation to any data impact assessments and/or any prior consultation with the relevant data protection authority, provided that Epos Now shall be entitled to charge a reasonable fee for such assistance.
6. Data Transfers. Epos Now may transfer Personal Data to other countries (i) where it is necessary in order to fulfil the terms of any contract which you have with Epos Now or (ii) in order to arrange provision of services to you (such as those from a credit card company). However, Epos Now shall only transfer such data to other countries as follows; (a) within the EU/EEA (b) to countries as recognized by the EU as having data-compliant laws through an "adequacy decision" (c) by "restricted transfer" (d) to other Epos Now group entities by use of standard contractual clauses, or (e) by other method approved by any data regulator from time to time.
7. Return of Data: Upon the termination or expiry of this Agreement for any reason, Epos Now shall return all Personal Data to the Customer as requested by the Customer in writing, provided that this shall not prevent Epos Now from retaining a copy to meet its legal or regulatory obligations.
8. Sub-Processors. The Customer hereby agrees that Epos Now may appoint any of its affiliates or sub-contractors as sub-processors without requiring further consent. Such

affiliates or sub-contractors are deemed to be approved under this clause and the Customer may request a list of such sub-processors from time to time.

9. Safeguards. Taking into account the state of the art, the costs of implementation, and the nature, scope, context and purpose of processing as well as the varying risks to rights and freedoms of natural persons, the parties warrant that for the duration of this Agreement they shall implement administrative, technical and physical safeguards sufficient to ensure the security and confidentiality, and protect against the unauthorised or accidental destruction, loss, alteration, use, or disclosure, of Personal Data and other records and information of the end-customers or employees and to protect against anticipated threats or hazards to the integrity of such information and records.
10. The Customer acknowledges and agrees to the processing by Epos Now of all of the Customer's transactional and sales data, which may include 'Personal Data' (as defined by applicable Data Protection Laws) for all purposes connected with this Agreement.
11. 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.
12. Epos Now cannot guarantee the recovery of Customer data where this is deleted by the Customer (or Epos Now at the Customer's request).

## **25. Indemnity**

1. The Customer shall indemnify and keep Epos Now and its officers, employees, consultants, agents and sub-contractors indemnified, on demand, against all losses, costs and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by Epos Now arising out of or in connection with any claim against Epos Now in relation to or arising out of the Customer's actions (including the actions of those granted access by the Customer) including:
  1. the Customer's content or data on the Epos Now System:
    1. infringing a third party's Intellectual Property Rights;
    2. being inaccurate or incomplete ; and/or
    3. being defamatory, offensive, in breach of privacy or data protection laws or otherwise being in breach of any civil Tort or criminal statute.
  2. use of the Products in a manner which causes loss, harm or damage to Epos Now or to any third party.

## **26. Limitation of Liability**

1. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EPOS NOW BE LIABLE TO YOU OR TO ANY THIRD PARTY (I) FOR ANY LOST PROFITS, LOSS OF USE, LOST DATA, INTERRUPTION OF BUSINESS, FAILURE OF SECURITY MECHANISMS OR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES OR (II) IN ANY EVENT, FOR AMOUNTS EXCEEDING THE GREATER OF (A) THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO EPOS NOW IN THE PRIOR SIX (6) MONTH PERIOD OR (B) THE COST OF THE PRODUCT OR (C) FIVE HUNDRED DOLLARS (CAD\$500). THIS SECTION SHALL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY IN THESE TERMS IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. The Customer acknowledges that the foregoing limitations are an essential element of these Terms and a reasonable allocation of risk between the parties, and that in the absence of such limitations the pricing and other provisions in these Terms would be substantially

different. The Product is controlled and operated from facilities in the United States and the United Kingdom but may involve transmission of data or utilization of third party services globally. Epos Now makes no representations that the Product is appropriate or available for use in other locations. Those who access or use the Product from other jurisdictions do so at their own volition and are entirely responsible for compliance with all Laws. Unless otherwise explicitly stated, all materials found on the Product are solely directed to users located in the United States

## 27. Termination

1. Unless stated otherwise herein, no cancellation or variation of an order by the Customer shall be effective unless it is made in writing and accepted in writing by an authorised officer of Epos Now. Epos Now reserves the right to refuse to accept such cancellation or variations or to accept cancellation or variation only subject to such conditions as it considers are warranted according to the circumstances.
2. Without limiting any other rights or remedies, either party ("Terminating Party") may terminate this Agreement with immediate effect by providing written notice to the other party ("Defaulting Party") on or at any time after the occurrence of any of the events specified below:
  1. a breach by the Defaulting Party of its obligations under this Agreement which (if the breach is capable of remedy) the Defaulting Party has failed to remedy within 14 days after receipt of notice in writing from the Terminating Party requiring the Defaulting Party to do so; or
  2. an event, including (or similar in nature to) the following:
    1. the Defaulting Party is unable to pay its debts as they fall due;
    2. the Defaulting Party goes into liquidation either compulsorily (except for the purpose of reconstruction or amalgamation) or voluntarily;
    3. a receiver is appointed in respect of the whole or any part of the Defaulting Party;
    4. a provisional liquidator is appointed to the Defaulting Party or the Defaulting Party enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors or has a winding-up order or passes a resolution for the voluntary winding-up or has an administrative receiver appointed or takes steps towards any such event; or
  3. the Defaulting Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
3. Epos Now may terminate this Agreement with immediate effect if it reasonably believes that the Customer has infringed or shall infringe Epos Now's rights or the rights of a third party.
4. If this Agreement terminates for any reason, notwithstanding any other provision, Epos Now shall have no obligation to refund the Customer and all charges payable by the Customer to Epos Now under this Agreement shall become due and payable immediately. This clause is without prejudice to any right by Epos Now to claim for interest or any other right under this Agreement.
5. The Customer's data stored within the Epos Now System shall be available for the Customer to download for a period of 30 days from the effective date of termination. After this period, the Customer's data shall not be recoverable by or for the Customer and may be deleted by Epos Now.

6. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

## 28. Force Majeure

1. Neither party shall be liable for any failure to perform its obligations under this Agreement if such failure results from circumstances which could not reasonably be contemplated at the time of entering into this Agreement and which are beyond the parties' reasonable control (including, without limitation, an act of God, strikes, lock-outs or other industrial disputes (involving the workforce of Epos Now), failure of a utility service or transport network, war, riot, civil commotion, terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood, storm or default of suppliers or sub-contractors). If a force majeure event causes failure to perform obligations for a continuous period of 30 days or more, either party may terminate this Agreement immediately by providing the other party with written notice.
2. As per clause 28.1, Epos Now withhold the right to delay order deliveries by up to 30 days in the event of force majeure.

## 29. Audit

1. During the term of this Agreement and for a period of two years following its termination, upon reasonable notice to the Customer, Epos Now shall have the right to audit all usage of the Software by the Customer either remotely or at the Customer's premises, provided that the Customer shall not be required to submit to such audit more than twice in any calendar year. The Customer shall provide Epos Now (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit. The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 29.1, unless the audit identifies a material default by the Customer, in which case the Customer shall reimburse Epos Now for all of its reasonable costs incurred in the course of the audit.
2. If an audit identifies that the Customer is in breach of this Agreement, without prejudice to Epos Now's other rights and remedies, the Customer shall promptly take the necessary steps to comply with its obligations (including making an additional payment for any use of the Software outside of the agreed licence scope at Epos Now's then current rates).

## 30. Referrals

1. Epos Now may provide the Customer with incentives ("**Offer**") for the Customer to make referrals to relating to the Epos Now Services and/or Products to third parties from time to time ("**Referral**").
2. The terms of the Offer shall be documented by Epos Now on the relevant web page or document detailing the Offer. Notwithstanding, any referral activity that has been formally pre-authorized by Epos Now in the form of an Offer shall be governed by this clause 30.
3. In the event of conflict between the Offer terms and the terms of this clause 30, this clause 30 shall prevail.
4. To provide Referrals, the Customer may be permitted by Epos Now to generate a shareable URL / link from its account within the Software. This link may then be provided by the Customer to third parties. When the third party follows the link and successfully purchases the relevant Epos Now Services and/or Products detailed in the Offer, the Customer may be entitled to the incentive detailed in the Offer. To be a valid Referral, the relevant purchase of Epos Now Services and/or Products must be made without any cancellation of the order within a period of one month.

5. No incentive or referral fees shall be payable to the Customer where the Customer has any fees or other charges outstanding, or where the making of such payments is prohibited by state law.
6. We may share certain personal data with third parties to fulfil these rewards in accordance with our [Privacy Policy](#).

### **31. Export control**

1. Export Control. The Product is subject to U.S. export control laws and regulations and may be subject to Canadian import laws or regulations. You agree to comply strictly with all such laws and regulations and not to use or transfer the Product for any use relating to nuclear, chemical, or biological weapons or missile technology. You also represent and warrant that you are not located in a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a “terrorist supporting” country and that you are not listed on any U.S. government list of prohibited or restricted parties.

### **32. Miscellaneous**

1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
2. It may be necessary for Epos Now to update this Agreement and its terms from time to time. If the Customer continues to use Epos Now’s services after Epos Now has informed the Customer of any updated version of this Agreement, the Customer shall be deemed to have accepted these changes and they shall be incorporated into this Agreement.
3. Save where expressly provided to the contrary, no variation of this Agreement shall be effective unless it is in writing and signed by both parties.
4. The Customer is responsible for informing Epos Now of any changes to their contact details.
5. Please note that Epos Now may record phone calls that we receive from the Customer for training and quality control purposes
6. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
7. The Customer may not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of Epos Now. Epos Now may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
8. All notices must be in writing and shall be deemed given when mailed by registered or certified mail, return receipt requested, to the other party’s main business address. Serving notice by email or fax shall not be accepted as an effective method of providing notice of a claim under this Agreement.
9. No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms. The Customer and Epos Now hereby waive their rights to participate in a class action, class-wide arbitration (where applicable), private attorney general action, or any other proceeding in which a party acts in a representative capacity.

10. Nothing in this Agreement is intended to, or shall be deemed to establish any partnership or joint venture between the parties, make a party the agent of the other party or authorise a party to make or enter into any commitments for or on behalf of the other party.
11. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
12. This Agreement is governed to the fullest extent permitted, by the domestic laws of the Province of Ontario and the federal laws of Canada applicable therein. For users within the Province of Quebec only, the domestic laws of the Province of Quebec shall apply. In all cases regardless of the location of the user, the parties consent to the exclusive jurisdiction of the courts of the Province of Ontario in relation to the construction, interpretation and validity of these Terms and Conditions.

## ANNEX A: Epos Now Software End User License Agreement (“EULA”)

PLEASE READ THIS EULA CAREFULLY BEFORE USING ANY EPOS NOW SOFTWARE. BY USING ANY EPOS NOW 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.

### 1. Application of this EULA

1. This EULA incorporates and supplements the Epos Now Terms & Conditions (General Terms and Conditions of Trading with Epos Now) (“**Agreement**”) as updated from time to time. In the event of conflict between the terms of this EULA and the Epos Now Terms & Conditions, the Epos Now Terms & Conditions shall prevail.

### 2. General Use

1. The Software, Systems, interfaces, content, fonts, documentation and any data that is provided by Epos Now to the Customer under its Software licence (as may be updated or replaced by Software updates or System restore software provided by Epos Now 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 Epos Now System under the terms of this Agreement and not for any other purpose.
2. Epos Now retains ownership of the Software and reserves all rights not expressly granted to the Customer
3. Epos Now, at its discretion, may make available future updates to the Software for the Customer’s Epos System.
4. The Customer shall carry out regular back-ups to removable media stored separately from the supported items and carry out other normal system

housekeeping routines (disc defragging etc). Epos Now 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 Epos Now required or performed under this Agreement. Epos Now shall use reasonable endeavours to rectify any such loss of data or programs, but reserves the right to charge for such services.

5. The Customer remains solely responsible for implementing adequate and industry standard virus protection measures to all parts of the Epos Now System.
6. 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.
7. 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.
8. From time to time Epos Now shall deprecate older operating system versions, supporting Software or Hardware minimum specifications. Epos Now shall 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.

### **3. Permitted Software licence uses and restrictions**

1. 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.
2. 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 Epos Now.
3. This EULA does not grant the Customer any rights to use Epos Now 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 Epos Now System. Except as and only to the extent expressly permitted in this EULA or by applicable law, the Customer must not copy, 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 Epos Now Systems, or any part thereof. Any attempt to do so is a violation of the rights of Epos Now. If the Customer breaches this restriction, it may be subject to prosecution and damages.
4. The Customer may not rent, lease, lend, charge, redistribute or sub-license the Epos Now Software or Software updates.

### **4. Termination**

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

*The following section applies to any API integrations with the Customer's web platform or systems.*

## **API TERMS OF USE**

## 1. Licensed Uses and Restrictions.

1. “API” means the software set of functions and procedures that allow the creation of third-party applications to access the features or data of Epos Now’s System.
2. The Epos Now APIs are owned by Epos Now and are licensed to the Customer on a worldwide (except as limited below), non-exclusive, non-transferable basis on the terms set forth herein.
3. These API Terms of Use define the legal use of Epos Now APIs, including all updates, revisions, substitutions, and any copies of the Epos Now APIs made by or for the Customer.
4. Epos Now Customer data (including but not limited to transaction data, sales data, product data and stock data) are owned by the Customer and not by Epos Now.
5. The Customer’s right to use the Epos Now APIs shall terminate immediately if Epos Now disables the Customer’s access to the Epos Now APIs for any reason.
6. The Customer shall:
  1. comply with any requirements or restrictions imposed on usage of client data by their respective owners. Although the Epos Now APIs can be used to provide the Customer with access to client data, neither Epos Now’s provision of the Epos Now APIs to the Customer nor the Customer’s use of the Epos Now APIs override the Customer’s data privacy requirements and restrictions, which may include "all rights reserved" notices, data protection laws, Creative Commons licenses or other terms and conditions that may be agreed upon between the Customer and its clients. In all cases, the Customer is solely responsible for making use of its client data in compliance with the applicable client's requirements and/or restrictions;
  2. remove from the Epos Now System any client data or other information that the applicable client asks the Customer to remove within 24 hours;
  3. disclose through a privacy policy or otherwise displayed in the footer of each page of the Customer’s applications, how it collects, uses, stores and discloses data collected from visitors and clients, including, where applicable, that third parties may serve content and collect information directly from visitors and may place or recognize cookies on visitors' browsers;
  4. provide accurate contact details for the Customer to Epos Now upon request; and
  5. provide an accurate statement of intended use of the applicable API to Epos Now upon request, and once provided restrict the Customer’s activities to stay within this statement.
7. The Customer shall not:
  1. Use the Epos Now APIs for any application that replicates or attempts to replace the essential user experience of EposNowHQ.com or any Epos Now app or website;
  2. attempt to cloak or conceal the Customer’s identity or the application's identity when requesting authorisation to use Epos Now APIs;
  3. cache or store any content other than for reasonable periods in order to provide the service the Customer is providing to its clients;

4. use the Epos Now APIs for any application that constitutes, promotes or is used in connection with spyware, adware, or any other malicious programs or code;
5. use the Epos Now APIs in any manner or for any purpose that violates any law or regulation within the UK and the location of any of its own servers, or any rights of any person, including but not limited to Intellectual Property Rights, rights of privacy, or rights of personality;
6. use the Epos Now APIs in a manner that adversely impacts the stability of Epos Now.com servers or adversely impacts the behaviour of other applications using the Epos Now APIs. Further, Epos Now reserves the right to rate limit or block applications that make a large number of calls to an API that are not primarily in response to direct user actions;
7. sell, lease, or sublicense the Epos Now APIs or access thereto or derive revenues from the use or provision of the Epos Now APIs, whether for direct commercial or monetary gain or otherwise, without prior written agreement from Epos Now; or
8. serve, or allow third parties to serve, advertising materials to clients, or to collect data for the purposes of marketing or advertising.

## **2. Ownership and Relationship of Parties.**

1. Epos Now owns all rights, title, and interest in and to the Epos Now APIs. Epos Now's rights apply to the Epos Now APIs and all output and executables of the Epos Now APIs, excluding any software components developed by the Customer which do not themselves incorporate the Epos Now APIs or any output or executables of the Epos Now APIs.
2. The Customer agrees to abide by all applicable proprietary rights laws and other laws, as well as any additional copyright notices or restrictions provided by Epos Now to the Customer.
3. These terms do not grant the Customer any right, title, or interest in any Intellectual Property Rights owned or licensed by Epos Now, including (but not limited to) the Epos Now APIs and Epos Now trademarks.

## **3. API Support**

1. Epos Now may elect to provide the Customer with support or modifications for the Epos Now APIs (collectively, "**API Support**"), in its sole discretion, and may terminate such API Support at any time without providing notice to the Customer.
2. Epos Now may change, suspend, or discontinue any aspect of the Epos Now APIs at any time, including the availability of any Epos Now APIs.
3. Epos Now may also impose limits on certain features and services or restrict the Customer's access to parts or all of the Epos Now APIs or the Epos Now website without notice or liability.

## **4. Payment**

1. Epos Now retains the right to charge for use of the APIs on a recurring basis upon notifying the Customer in advance. Epos Now may increase, reduce or remove this charge at any time. Where an increase is made, a notice period of no less than 7 calendar days shall be provided to the Customer by Epos Now
2. Where payment is not received, Epos Now reserves the right to exercise its rights for late payment detailed in the Agreement.

## **5. Disclaimer of Warranties**

1. Some of the Epos Now APIs may be experimental and not tested in any manner. Epos Now does not represent or warrant that any Epos Now APIs are free of

inaccuracies, errors, bugs, or interruptions, or are reliable, accurate, complete, or otherwise valid.

2. The Epos Now APIs are provided 'as is' with no warranty, express or implied, of any kind. Epos Now expressly disclaims any and all warranties and conditions, including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, availability, security, title and/or non-infringement.
3. The Customer's use of the Epos Now APIs is at the Customer's own discretion and risk, and the Customer shall be solely responsible for any damage that results from the use of any Epos Now APIs including, but not limited to, any damage to the Customer's computer system or loss of data.
4. It remains the Customer's responsibility to verify the integrity and accuracy of any data accessed, edited or supplied through an API.

Version 1.0 January 2021