

## SCHEDULE 5a: POS SOLUTION TERMS

### Part 1: General Hire Terms

1. The following terms and conditions apply whenever you hire a POS Solution from us and are incorporated as part of the terms and conditions set out in the Agreement.
2. The agreement between us relating to your hire of the POS Solution from us consists of the following:
  - (a) the provisions relating to the POS Solution as set out in any Application Form (including without limitation the minimum hire period and pricing) accepted by us or as otherwise agreed in writing from time to time;
  - (b) relevant terms and conditions set out in the Agreement;
  - (c) the following hire terms and conditions; and
  - (d) where applicable, any third-party terms and condition in relation to the POS Solution, including any acceptable use policy; (together the “**POS Solution Hire Terms**”).
3. For the purposes of these POS Solution Hire Terms:

“**Installation Support**” means either:

  - a. where any Hardware and Software associated with POS Solution is supplied via a courier, remote support via web and/or telephone communication as applicable in the circumstances; or
  - b. where so communicated by us to you, installation by a third party upon appointment and in accordance with the additional costs, terms and conditions as notified by us to you.

“**Hardware**” physical components, devices, terminals, tills, Equipment, and/or any component or ancillary parts provided by us and/or hired from us under a Terminal Hire Agreement, specifically for use in conjunction with POS Solution.

“**POS Solution**” means the applicable integrated Hardware and Software to facilitate payment processing services pursuant to the Services provided by Worldpay under the Agreement.

“**SIM**”: means a module which when used with Terminals enables access to POS Solution;

“**Software**” means each of the software products owned or licensed by us, or a third party engaged by us, provided in conjunction with the POS Solution including but not limited to any bug fixes, updates, upgrades, modifications and new releases or new versions of such software (i) downloaded by you from App Store, GooglePlay (depending on your device) or any other app store approved by us and/or (ii) pre-loaded onto any applicable Hardware, including but not limited to the operating system and third party processing application.

“**Third Party Licensor**” means a third party whose software products have been (a) made available to Worldpay for distribution and licensing and/or sub-licensing under the terms of its agreement with Worldpay or (b) made available to Merchant for use with Worldpay products and/or services upon acceptance by the Merchant of the third party’s end user license agreement, and/or any other terms, including any acceptable use policy .

4. **Minimum Hire Period:** Subject to paragraph 16, we shall provide POS Solution and Installation Support, for the minimum period of hire shown in the Application Form (or if no minimum period is shown then Eighteen (18) months) (the “**Minimum Hire Period**”). These terms and conditions shall continue thereafter for each successive month (each a “**Renewal Hire Period**”) upon the terms and conditions set out below unless terminated earlier in accordance with paragraphs 31, or 33 below, or clause 12 of the Agreement.
5. **Commencement and delivery:** The Minimum Hire Period commences on the date of delivery of the POS Solution. You agree to accept delivery of the POS Solution within 28 days of us notifying you (which may be by email) that these are ready for delivery. If for any reason you fail to accept delivery within this timeframe then an administration fee of £100 plus VAT will be charged and be payable by you in accordance with paragraph 37.a below.
6. You will provide all necessary power, telecommunications and internet links for the POS Solution and we shall not be under any obligation to install any POS Solution if such links are not in place. A stable and secure internet connection must be maintained at all times for the proper functioning of online transactions through POS Solution. You are solely responsible for the payment of any fees related to such facilities.
7. You will install and use the POS Solution only in your legitimate trading premises, being premises in which you have previously informed us that the POS Solution is installed. You will permit us, our employees, agents, sub-contractors or any other person authorised by us (each an “**Authorised Person**”) to enter your premises (and where relevant you shall obtain permission for us and any Authorised Person to enter the premises of any third party) at all reasonable times for the purpose of inspecting, repairing and/or maintaining the POS Solution and you will give such persons all reasonable assistance.
8. **Indemnity:** Until returned and received, or collected by us, each POS Solution shall be at your sole risk and you indemnify us against any loss or damage to each POS Solution howsoever caused (other than fair wear and tear in the ordinary course of usage of each POS Solution). You will take reasonable care of any Hardware delivered to you in relation to POS Solution, keep it in good working order and not alter, amend or interfere with it or any sign or label affixed to it, PROVIDED THAT you may, where a sign or label becomes worn, replace such sign or label with an identical one we provide you. You will report to us any damage to the Hardware.

#### **Payment**

9. In return for us supplying you with the POS Solution, you will punctually pay any set-up fee and the initial and subsequent monthly rentals (including during any Renewal Hire Period) as set out in the Application Form or which otherwise apply from time to time, together with any additional service charges of which you are notified from time to time. The monthly rental payments are payable monthly in arrears by direct debit on the 18th of each month (or the next business day) from a bank account acceptable to us. You will maintain with your bank an instruction to effect such direct debits. The charges payable under this schedule form part of the Fees, are payable in accordance with the provisions of clauses 4 and 8 of the Agreement,

and are in addition to any other Fees, charges or other amounts payable under the Agreement.

10. In addition to our right to debit your bank account arising elsewhere in the Agreement, we shall be entitled to debit your bank account with the following items:
  - (a) any other sums payable by you under this schedule; and
  - (b) interest as provided for in clause 9 of the Agreement.

#### **Insuring the POS Solution**

11. The POS Solution will remain our or such relevant third party's property. You shall not sell, charge, encumber, part with possession or otherwise dispose of the POS Solution. You will insure against loss or damage to the POS Solution including without limitation for the full replacement value in the sum of £500 for each of the Hardware supplied to you. If you receive any insurance monies, you must hold these on trust for us.

#### **Care and use of the POS Solution**

12. You will operate the POS Solution in accordance with the provisions of any operating manuals or instructions in existence from time to time together with any instructions issued or made available by us from time to time. We may in our discretion require you to update the POS Solution or allow the POS Solution to receive any updates remotely. You agree not to impede such update process in any manner. If such updates are required, you will provide any reasonable assistance in making necessary changes and shall be responsible for your own costs with respect to such changes, including where the POS Solution is required to be returned to us. We will have no obligation to provide any support in relation to any updated versions.
13. From time to time updates, upgrades, maintenance, and other necessary changes to the POS Solution may be performed by Worldpay or a third-party which may result in service interruptions, delays or errors. Neither we nor the third party will be liable for any such interruptions, delays, errors or bugs.
14. You will only use such equipment and materials in connection with the POS Solution as have previously been approved by us in writing. Damage to, or malfunction of, the POS Solution or any equipment or materials resulting from the use of non-approved equipment and materials will be your responsibility. The POS Solution does not function with every tablet or mobile device. Worldpay may alter which tablets or mobile devices or other relevant equipment are approved as compatible in Worldpay's discretion on written notice from time to time.
15. **Mobile interference:** The wireless nature of the POS Solution means that its use is subject to the availability of wireless connectivity. No warranty or representation is, has or will be given or made by us that the POS Solution will be capable of use free of any interruptions.
16. Without prejudice to any other provision of this Schedule, we shall not be responsible for any inability to use the POS Solution if and to the extent caused by electrical interference,

problems with telecommunications or satellite links, third party service provider or any other similar circumstances beyond our control.

17. If any SIM card is provided with any POS Solution, then you shall not use the SIM card for any purposes other than the operation of that POS Solution in accordance with the terms of the Merchant Services Agreement including the terms specified in paragraph 17 to 22 of this POS Solution Hire Terms.
18. We do not represent or warrant that the SIM services shall be available without interruption or free from error. You recognise that the SIM services, by their nature, may from time to time be adversely affected by physical features, atmospheric conditions and other causes of interferences and may fail and require maintenance without notice. You acknowledge that we will have no liability to you in respect of any such adverse effects, limitations or lack of availability.
19. We shall have the right to allocate any SIM to you for the purpose of providing the POS Solution but you shall have no rights in (and no other rights in respect of) any SIM.
20. You shall:
  - a. only use the SIMs for legitimate business purposes in accordance with the terms of the Merchant Services Agreement;
  - b. use the SIMs only together with the Terminal provided with POS Solution for the purpose described in the Merchant Services Agreement;
  - c. not use the SIMs in or connected to any device or hardware other than the Terminals provided under this POS Solution Hire Terms;
  - d. not use the SIMs fraudulently, in connection with a criminal offence, in breach of any law or statutory duty, for any improper, immoral or unlawful purpose, or any purpose not recommended by us;
  - e. comply with any reasonable request by us which concerns the POS Solution, the SIMs or connected matters;
  - f. keep confidential and not disclose to any third party any personal identification number issued by us (or our authorised representatives) permitting access to the SIM services;
  - g. not use or allow the SIMs to be used to develop a product line which is similar to the SIMs; and
  - h. keep any login details (including any passwords) for any account secure and you shall be responsible for any activity that occurs under an account assigned to you.
  - i. You shall inform us promptly of any breach of security, shall ensure that its systems comply with any reasonable minimum requirements specified by us.
21. We may determine the maximum number of software downloads using SIM data permitted per Terminal per month ("Download Limit") and you shall use reasonable endeavours to ensure the number of downloads does not exceed the Download Limit.

22. We reserve the right to disconnect or throttle a SIM or Terminal provided with POS Solution where the we reasonably believe that the SIM is being used in a way which contravenes any of the provisions set out in paragraph 20 of this POS Solution Hire Terms.
23. You acknowledge that we are not the manufacturers of, dealers in, or experts in the POS Solution, Software, Hardware or similar goods. Accordingly, you hereby release and discharge us from all present and future obligation and liabilities which we may have to you, or any person claiming through you, in respect of the quality or condition of the POS Solution, Software or Hardware.
24. **Software:** The Software may include Third Party Licensor software that is licensed to you under these POS Solution Hire Terms, or under such Third Party Licensor's own terms. The Software is protected by intellectual property rights, which remain the sole and exclusive property of Worldpay or any Third Party Licensor. Your right to use the Software does not entail any transfer of any intellectual property rights to you and for the avoidance of doubt you do not acquire additional rights in the Software beyond what is specified in these POS Solution Hire Terms. Where applicable, we grant you a non-exclusive, non-transferable licence to use the Software solely for your internal business purposes. You may download, install and use the Software on the POS Solution and only for the purpose of using the POS Solution to accept payments from your customers. You agree to use the Software in accordance with any applicable Third Party Licensor terms and conditions (including any acceptable use policy), Merchant Operating Instructions and applicable user guides. In addition, you agree:
- (a) not to copy the Software except where such copying is incidental to normal use of the Software or where necessary for the purpose of back up or operational security;
  - (b) not use Software in an improper manner or to sell illegal goods or service;
  - (c) not to produce additional copies, rent, lease, sub-lease, loan, translate, merge, adapt, combine, vary, modify, decompile or reverse engineer the Software except as permitted by law;
  - (d) keep all copies of the Software secure and to maintain accurate and up to date records of the number and location of the Software;
  - (e) to supervise and control the use of the Software and ensure the Software is only used in accordance with the terms of the Agreement including this Schedule;
  - (f) to replace the current version of the Software with any updated or upgraded version or new release immediately on receipt of notice or directions from us to download such update or new version;
  - (g) not to use the Software via any communications network, service bureau, time sharing service or by means of remote access.
  - (h) not to otherwise use the Software in any improper manner.

The integrity of the Software may be protected by technical protection measures (TPM) so that the intellectual property rights, including copyright, in the Software cannot be misappropriated. You must not attempt in any way to remove or circumvent any such TPM, nor apply or manufacture for sale or hire, import, distribute, sell or let for hire, offer or expose for sale or hire, advertise for sale or hire or have in your possession for private or commercial purposes any means of which is to facilitate the unauthorised removal or circumvention of such TPM.

25. You acknowledge that the Software may not be free of bugs, errors and agree that the existence of minor errors shall not be a breach of this Agreement. Except as expressly stated to you, the POS Solution is provided “as is” and without any warranties, whether express or implied.
26. You agree that any liability we may have to you in relation to all Claims arising in respect of our provision of the POS Solution under this Agreement during each Contract Year shall in each case be limited to (a) in the first Contract Year, a sum equal to the average Monthly Fees paid for the POS Solution, in the period between the Commencement Date and the first event giving rise to the first such claim, multiplied by six (6); and (b) in each Contract Year thereafter, a sum equal to the Fees paid for the POS Solution in the six (6) months immediately preceding the first event giving rise to the first such claim in the relevant Contract Year. Your sole remedy for any defects or faults in the POS Solution shall be correction by Worldpay or a third party on its behalf. Worldpay shall in no event be liable for any indirect damage or loss arising under or in connection with your use of the POS Solution, including but not limited to loss of profit, loss of reputation or goodwill, production downtime, loss of business or business opportunities, loss of income or anticipated savings, or loss of and/or damage to data or information. This applies regardless of how the damage or loss was caused and whether the damage was foreseeable at the time of entering into agreement).
27. You may use the POS Solution only in conjunction with the equipment provided by Worldpay or identified in any User Guide. Notwithstanding any other term of this Agreement Worldpay will not be liable in any way for your use of the POS Solution in conjunction with materials, content or equipment not provided by Worldpay as part of the POS Solution.
28. You may be able to access third party content and services through the POS Solution. We do not assume any responsibility for the actions, products, services and content of any third party.
29. You agree to give us three months’ notice in writing of any proposed change to any electrical power supplied or to the telecommunication links in or to the premises where the POS Solution is located. We reserve the right to terminate these POS Solution Hire Terms upon three months’ written notice if we consider the aforementioned changes would or could affect the operation of the POS Solution.
30. You will indemnify us against all claims and all losses, costs, expenses, damages and liabilities whatsoever incurred by us (including the cost of repairing, replacing or removing the POS Solution) by reason of, or in any way attributable to, your use (including use by your agents, sub-contractors and employees) of the POS Solution.
- 31. Your right to terminate these POS Solution Hire Terms**  
You have the right to terminate the Agreement:  
(a) by giving us at least one month’s written notice expiring at the end of the Minimum Hire Period, or the end of the then applicable Renewal Hire Period as the case may be; or

(b) by one month's written notice if a variation of the Agreement gives rise to a right of termination.

32. If you give notice to terminate these POS Solution Hire Terms relating to the POS Solution this shall not automatically terminate the other provisions of the Agreement or the Services other than the POS Solution hire. The Agreement shall remain in place unless otherwise agreed between the Parties.

**Our right to terminate these Terminal Hire Terms**

33. In addition to the provisions of paragraph 31 of this Schedule and clause 12 of the Agreement we have the right to terminate and/or suspend these POS Solution Hire Terms:

- a. by giving one month's written notice expiring on or at any time after the expiry of the Minimum Hire Period;
- b. at any time with immediate effect by notice to you where (i) you fail to pay any amount due on the due payment date; (ii) you are otherwise in default or unauthorised use of the POS Solution (including without limitation any Software license terms set out herein); and/or (iii) any Third Party Licensor terminates the license, sub-license and/or resale arrangements which Worldpay depends on for the Software and/or POS Solution.

34. You agree that termination of the Agreement will automatically terminate these hire terms and conditions at the same time, unless we otherwise agree (at our sole discretion).

**What you must pay if these POS Solution Hire Terms are terminated**

35. Upon termination of these hire terms and conditions:

- a. you will immediately return the POS Solution to us (at such place within the United Kingdom as we reasonably require, in good order, repair and condition (fair wear and tear only excepted) or to an Authorised Person or allow us or an Authorised Person to enter your premises (and where relevant you shall obtain permission for us and any Authorised Person to enter the premises where the POS Solution is or where we believe them to be) to remove the POS Solution; and
- b. you will immediately pay us all amounts owed by you under the Agreement.

36. Where the Agreement has terminated (for whatever reason) prior to the expiry of the Minimum Hire Period or any subsequent Renewal Hire Period (as the case may be), then in addition to the provisions of paragraph 8 above, you will pay to us:

- a. all arrears of rental payments outstanding at the date of termination;
- b. a sum equal to the aggregate of all rental payments which would, but for the termination of the Agreement, have become due and payable under the Agreement from the date of termination to the expiry of the Minimum Hire Period (or to the expiry of the applicable Renewal Hire Period as the case may be) less a discount of 5% of each rental. You agree that your liability under this paragraph 31b shall accrue prior to termination of the Agreement.

- c. damages for any breach of the Agreement and all costs, expenses and fees incurred by us in recovering possession of the POS Solution and/or enforcing our rights under the Agreement;
- d. if the POS Solution not recovered by us within 1 week after termination of the Agreement, an amount of £85 (plus VAT) in respect of each of the POS Solutions for each week or part thereof that you retain possession of the POS Solution beyond such termination (such amount being the sum that we ordinarily charge where the POS Solution is hired from us on a weekly basis); and
- e. if the POS Solution is not recovered by us within one month after termination of the Agreement, an amount equal to our reasonable estimate of the market value of the POS Solution at the date of termination.

#### **Other charges under the Agreement**

37. In addition to any (i) charges agreed in the Agreement, and/or (b) third party or other installation charges that may be payable in relation to Installation Support, we may charge you and you will pay us the sum of:
- a. £100 (plus VAT) administration fee if you fail for any reason to accept delivery of the POS Solution within 28 days of us notifying you that these are ready for delivery;
  - b. £388 (plus VAT) for the repair of a damaged till;
  - c. 388 (plus VAT) for the replacement of a stolen or lost till;
  - d. £282 (plus VAT) for the replacement of a stolen or lost kitchen display system (KDS);
  - e. £282 (plus VAT) for the repair of a damaged kitchen display system (KDS);
  - f. up to £189 (plus VAT) for the replacement of each Lite POS Solution bundle (actual charge will vary according to the type of POS Solution hired); and
  - g. up to £576 (plus VAT) for the replacement of each Standard or Pro POS Solution bundle (actual charge will vary according to the type of POS Solution hired).
- Each POS Solution bundle is defined in the Application Form provide by Worldpay.

#### **Confidentiality**

38. You shall not, during the term of the POS Solution Hire Terms and for a period of two (2) years thereafter, disclose or provide information about the POS Solution to third parties where Worldpay, or any third party providing any part of the POS Solution has expressly stated that information is confidential or if it can reasonably be assumed that Worldpay or such party wishes to keep it confidential.

#### **Variation of these Hire Terms and Conditions**

39. On notification to you, we may from time to time vary the rental charges, other charges or payments and/or the terms of the hire terms and conditions. Any such variation shall become effective upon us giving you at least one month's written notice. In circumstances where the variation constitutes a material variation to these hire terms and conditions, you shall be entitled to terminate these POS Solution Hire Terms upon one month's written notice provided that such notice is served upon us within one month of you receiving the notice of variation.

#### **General Provisions**



40. You agree acknowledge that:
- a. Where applicable, Worldpay is a reseller of Third Party Licensor products, under Worldpay's own terms and agreements.
  - b. Worldpay markets and offers the POS Solution in its own name and for its own account and is an independent trader in relation to Third Party Licensor.
  - c. Third Party Licensors do not have any contractual relationship or responsibility towards you regarding the provision of POS Solution except as may otherwise be agreed directly between you and the Third Party Licensor.
  - d. As between Worldpay and you, Worldpay is solely responsible for the provision of the POS Solution.
  - e. Third Party Licensor is not a financial entity and does not provide any financial services (e.g., payment service) to Worldpay, regardless of how Worldpay chooses to provide the POS Solution to you. Without limiting clause 17, you acknowledge and agree that the POS Solution may include certain third-party software and hardware and you agree to be bound by any applicable third party terms and conditions (including any acceptable use policy) that apply. If you have any questions about the [performance of the] software [or hardware] you should contact Worldpay in the first instance.
41. You agree that we may assign, novate, transfer or subcontract any or all of our rights and obligations under this Schedule and/or ownership of the Hire Terminals to a third party at any time without your consent. You shall execute any document reasonably required by us to give effect to any such assignment, novation or subcontracting.
42. Such clauses as by their nature are intended to survive termination will continue to apply in respect of the Hired Terminals following termination of the Agreement for whatever reason.
43. If you are a partnership, each partner will be jointly and severally liable under the Agreement.
44. We shall not be liable for any delay or failure to carry out any of our obligations under the Agreement if such failure is due to circumstances beyond our direct control.
45. The Agreement is personal to you, and you may not assign it or transfer it. If you are an individual, the Agreement will be binding upon your personal representatives.
46. These POS Solution Hire Terms are not intended to confer any person or entity other parties any right hereunder, except that a Third Party Licensor may enforce this POS Solution Hire Terms as a third party beneficiary solely with respect to any Third Party Licensor Software, subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.