

General Terms and Conditions (June 2015 Edition)

1. Introduction

- 1.1 This document comprises the General Terms and Conditions (*General Terms*) for the provision of Goods and Services and the Licensing of Software Products by *Us* to *You*. These General Terms and Conditions form part of *Your Contract* with *Us*.
- 1.2 Words used in these *General Terms* that are printed like *this* are defined in clause 15.
- 1.3 Reading directions included in this document are intended to help understand which parts of the *Contract* are beneficial for *You* to understand and do not form part of this *Contract*.

2. Binding Contract and Cooling Off

- 2.1 Unless we receive from *You* within the *Cooling Off Period* a notice in writing (*Cooling Off Notice*) indicating that you do not wish to proceed with the *Sales Order*, a legally binding *Contract* will automatically come into existence on the date of the original *Sales Order* notwithstanding that the *Sales Order* may be signed or verbally accepted at a later date by *You*. The *Cooling Off Notice* must be in writing and sent to *Us* in accordance with clause 14.17 clearly referring to the *Sales Order* number and stating in unconditional terms that *You* do not wish to proceed with the *Sales Order*.
- 2.2 You may choose to verbally agree to proceed with the *Sales Order*. A legally binding *Contract* will automatically come into existence at the time and on the date that you provide your verbal acceptance (*Verbal Acceptance*) of a *Sales Order*. If *You* provide a *Verbal Acceptance* to *Us*, the *Cooling Off Period* will not apply to *You*. We may for the purposes of future evidence make a recording of the *Verbal Acceptance*. *You* give *Us* full permission to make and keep such recording. If *You* are a company or a partnership, *You* agree that the person providing the *Verbal Acceptance* on *Your* behalf is duly authorized by *You* to provide the *Verbal Acceptance* and that *You* will be bound by the representations and statements made by that person.
- 2.3 *You* should carefully consider all documents comprising the *Contract* before the expiry of the *Cooling Off Period* and *You* should retain the copies for *Your* future reference.

3. Software License and Surebiz™ Maintenance Services

The following terms and conditions shall apply to all *Software* licensed by *Us* to *You* (including *Software* licensed as part of providing access to the *Online Services*) and to the *Surebiz™ Maintenance Services* to be provided by *Us*.

3.1 License

- (a) We grant to You a revocable, limited, non-exclusive, non-transferable license for the *License Term* to use:
- (i) the *Documentation*; and
 - (ii) the *Software*;
- for the purpose of operational use, back up and training.
- (b) You may make a back-up copy of the *Software* for security purposes.
- (c) Each *License* is for use for the management of a single business location only. Each *License* for the *Shortcuts Point of Sale™ Software* installed at your location is for a single computer system only. Each *License* for the *Shortcuts Live™ Software* accessed through the *Online Services* may be operated from any computer system or device. You cannot use the *Software* for the purposes of managing more than one business location at the same time.
- (d) You shall not reverse engineer, modify, decompile, disassemble or otherwise attempt to derive source code from the *Software* or *Documentation*, except and only to the extent that the foregoing restriction is prohibited by applicable law. You acknowledge and agree that We may, at any time without notice, incorporate license management software into the *Software* to prevent You from exceeding the scope of Your license(s). You shall not permit any third party product to make any calls upon the *Software* or otherwise access or use the functionality of the *Software* – not otherwise authorized under these *General Terms*; nor shall You use or permit others to use any functionality of the *Software* to access any database other than those created by the *Software*. THERE ARE NO IMPLIED LICENSES UNDER THIS CONTRACT (BY IMPLICATION, ESTOPPEL OR OTHERWISE), AND ANY RIGHTS NOT EXPRESSLY GRANTED TO YOU ARE RESERVED US.
- (e) Title to and ownership of all *Software* and *Documentation*, including without limitation all intellectual property rights, are and shall remain the exclusive property of Us. You shall not take any action to jeopardize, limit or interfere with such ownership of and rights with respect to the *Software* and *Documentation*. We reserve all rights not explicitly granted in this *Contract*.

3.2 Term of License

Unless otherwise terminate in accordance with the termination provisions in clause 14.14, the *License* shall operate for the *Initial Term* and then automatically renew for a further *Renewal Term* at the expiration of the *Initial Term* and at the expiration of each *Renewal Term* unless You have given Us written notice of termination at least thirty (30) days prior to the expiry of the current *Initial Term* or *Renewal Term* (as applicable).

3.3 License Fees

- (a) For any recurring fees that are payable (whether they be for the *License*, *Surebiz™ Maintenance Services* or for access to the *Online Services*), You must enter into a *Monthly Deduction Authority*.
- (b) You acknowledge that We may vary the amount of fees payable by You under the *Contract* from time to time to reflect changes in Our prevailing recommended retail prices, upon giving thirty days' notice to You.

Reading Directions:

If you have purchased the License through an Upfront License Fee (Outright purchase model), please read clause 3.4.

If you have subscribed for the License through Rental License Fees (Rental model), please read clause 3.5.

If you have subscribed for the License through mybooker™ please read clause 3.6.

Generally applicable terms and conditions continue with clause 4.

3.4 **Outright Purchase Fees and Surebiz™ Maintenance Services**

The following terms and conditions are applicable to *Your Contract* with *Us* if *You* have purchased the *License* through the payment of an *Upfront License Fee*.

- (a) *You* must pay to *Us* the *Upfront License Fee* on or before the date on which the *Software* is supplied to *You* and the *Maintenance Fee* for the *Maintenance Initial Term* and for any commenced *Maintenance Renewal Term* (even if the *Surebiz™ Maintenance Services* are terminated before the expiration of the *Maintenance Initial Term* or before the expiration of any commenced *Maintenance Renewal Term*); or
- (b) In consideration of the payment of the *Maintenance Fee* *We* will provide the *Surebiz™ Maintenance Services* to *You* for the *Maintenance Initial Term* and any *Maintenance Renewal Term* (*Maintenance Term*). The *Surebiz™ Maintenance Services* includes:
 - (i) any *Updates* and *Upgrades* developed by *Us*; and
 - (ii) Unlimited *Help Desk Services* during *Our* normal business hours subject to *Our Fair Use Policy* as described under clause 4.3;
 - (iii) *Help Desk Services* relating to issues critical to the running of *Your* business outside of normal business hours (currently 24 hour by 7 days a week support) subject to *Our* Fair Use Policy as described under clause 4.3.
- (c) The *Maintenance Term* will automatically renew for a further *Maintenance Renewal Term* at the expiration of the *Maintenance Initial Term* and at the expiration of each *Maintenance Renewal Term* unless *You* have given *Us* written notice of termination at least thirty (30) days prior to the expiration of the current *Maintenance Initial Term* or *Maintenance Renewal Term* (as applicable).
- (d) If *You* terminate the *Surebiz™ Maintenance Services* in accordance with clause 3.4(c), and at a later date *You* wish to re-subscribe, then *You* must pay to *Us*:
 - (i) the *Maintenance Fee* for the *Maintenance Initial Term* from the date *You* give written notice to *Us* that *You* wish to re-subscribe to the *Surebiz™ Maintenance Services* and for any commenced *Maintenance Renewal Term* (even if the *Surebiz™ Maintenance Services* are terminated before the expiration of the *Maintenance Initial Term* or before the expiration of any commenced *Maintenance Renewal Term*).
 - (ii) the *Resubscriber Maintenance Surcharge* for the first twelve (12) months from the date *You* give written notice to *Us* that *You* wish to re-subscribe to the *Surebiz™ Maintenance Services*.

3.5 **Rental Fees and Surebiz™ Maintenance Services**

The following terms and conditions are applicable to *Your Contract* with *Us* if *You* have subscribed for the *License* through the payment of *Rental License Fees*.

- (a) *You* must pay to *Us* the *Rental License Fee* for the *Initial Term* and for any commenced *Renewal Term* (even if the *License* or *Contract* is terminated (by *You* or by *Us*) before the expiration of the *Initial Term* or before the expiration of any commenced *Renewal Term*).
- (b) In consideration of the payment of the *Rental License Fee* *We* will provide the *Surebiz™ Maintenance Services* to *You* for the term of this *Contract*. The *Surebiz™ Maintenance Services* includes:
 - (i) any *Updates* and *Upgrades* developed by *Us*; and
 - (ii) Unlimited *Help Desk Services* during *Our* normal business hours subject to *Our Fair Use Policy* as described under clause 4.3;
 - (iii) *Help Desk Services* relating to issues critical to the running of *Your* business outside of normal business hours (currently 24 hour by 7 days a week support) subject to *Our* Fair Use Policy as described under clause 4.3.
- (c) The *Surebiz™ Maintenance Services* cannot be terminated other than by termination of the *Contract* pursuant to clause 14.14.

3.6 **Mybooker™ Fees and Surebiz™ Maintenance Services**

The following terms and conditions are applicable to *Your Contract* with *Us* if *You* are using the *Software* under the mybooker™ *License*:

- (a) Where *You* have subscribed for *Online Booking* through the *Online Services* *You* must pay to *Us* the *Online Booking Fee* for each *Online Booking* made through the *Online Services*. *We* will calculate the total *Online Booking Fees payable* in each calendar month and direct debit *Your* account the total within 14 days of the end of each respective calendar month.
- (b) Where *You* have not subscribed for *Online Booking* through the *Online Services* *You* must pay to *Us* the *Maintenance Fee* for the *Initial Term* and for any commenced *Renewal Term* (even if the *Contract* is terminated before the expiration of the *Initial Term* or before the expiration of any commenced *Renewal Term*).
- (c) In consideration of the payment of the *Online Booking Fee* or *Maintenance Fee* *We* will provide the *Surebiz™ Maintenance Services* to *You* for the term of this *Contract*. The *Surebiz™ Maintenance Services* includes:
 - (i) any *Updates* and *Upgrades* developed by *Us*; and
 - (ii) *Help Desk Services* during *Our* normal business hours subject to the payment of *Help Desk Service Fees* as described under clause 3.6(d);
 - (iii) *Help Desk Services* relating to issues critical to the running of *Your* business outside of normal business hours (currently 24 hour by 7 days a week support) subject to the payment of *Help Desk Service Fees* as described under clause 3.6(d).
- (d) In consideration of the payment of each *Help Desk Service Fee* *We* will provide *Help Desk Services* for a single inquiry, provided that such inquiry may be resolved within 20 minutes. Additional charges may apply where inquiries require more than 20 minutes to resolve. *We* will calculate the total *Help Desk Services Fees payable* within each calendar month and direct debit *Your* account the total within 14 days of the end of the respective calendar month.
- (e) The *Surebiz™ Maintenance Services* cannot be terminated other than by termination of the *Contract* pursuant to clause 14.14.

4. **Surebiz™ Maintenance Services General Terms**

- 4.1 It is *Your* responsibility to ensure the operating system of any computer systems hosting or accessing *Our Software* subject to *Surebiz™ Maintenance Services* is kept up to date with service packs & patches, and is free of viruses, spyware or other disabling feature.
- 4.2 *We* reserve the right to change the level of *Surebiz™ Maintenance Services* provided from time to time, provided that such *Surebiz™ Maintenance Services* continue to include timely *Updates* to correct defects and periodic *Upgrades* to enhance the *Software*.

4.3 Help Desk Services Fair Use Policy

The *Surebiz™ Maintenance Services* include reasonable *Help Desk Services* during *Our* normal business hours; however, *Our Fair Use Policy* does not permit excessive or unreasonable use of the *Help Desk Services*. The *Fair Use Policy* does not apply where a *Help Desk Service Fee* is payable. Where *Your Help Desk Services* are subject to the *Fair Use Policy*, the *Help Desk Services* do not cover:

- (a) incidents that arise relating to difficulties with hardware, operating systems or third party products;
- (b) incidents that arise because a user has not received training for the *Software*, or issues because of an error or negligence on *Your* part;
- (c) any consulting services required to assist *You* in installing any *Update* or *Upgrade* provided to *You*, or
- (d) any consulting services required to re-install the *Software* due to hardware failure or change of hardware.

Whilst support services relating to the above may be provided by *Us* to *You*, *We* will in *Our* discretion, from time to time, be entitled to charge *You* an additional price in respect of such support (as agreed in writing between *Us* and *You*).

5. Online Services Terms and Conditions

The following terms and conditions form part of the *Contract* where *We* agree to provide access to the *Online Services* to *You* pursuant to the *Contract*, by way of subscription.

Reading Directions:

Access to Online Services is required for the following products and services as of time that these General Terms and Conditions were last published: Shortcuts SMART System™; BookME™; Self Check-In; Set & Forget marketing™; GiftME™; Shortcuts Spotlight™; Shortcuts Scorecard™; Mylocalsalon™ Site Directory; Shortcuts Loyalty; Shortcuts Memberships; BookingHUB™; Shortcuts Anywhere; Global Marketing, Global Reporting and mySALONapp;

Access to Online Services may also be required for additional products and services not listed above that may be released at a later time or may later incorporate access to the Online Services.

5.1 Access to Online Services

- (a) *We* hereby grant to *You* access to use the *Online Services* for the purpose of operational use and training.
- (b) The term of the *Contract* in relation to access to the *Online Services* and in relation to the payment by *You* of the fees set out in clause 5.2 shall operate until terminated in accordance with clause 14.14.
- (c) *We* reserve the right to cancel or suspend *Your* access to the *Online Services* if *You*:
 - (i) fail to make any payment of any *Service Subscription Fee* or other fee payable for *Software* operated in connection with the *Online Services*; or
 - (ii) fail to maintain current membership of *Surebiz™ Maintenance Services* related to a licensed copy of the *Shortcuts Point of Sale™* product; or
 - (iii) otherwise fail to comply with any term and condition of the *Contract*.
- (d) *We* will give *You* notice of the breach specified in 5.1(b) above, and, if *You* are unable to cure the breach within thirty (30) days after such notice, then *We* shall have the right to cancel or suspend *Your* access to the *Online Services*, by e-mail. This is in addition to any other right *We* may have in relation to the breach.
- (e) Products accessed through the *Online Services* may be dependent upon licensing of *Software* provided by *Us* or subscription to other products accessed through the *Online Services*. Operation of products accessed through the *Online Services* is conditional on:
 - (i) *Your* purchase or subscription of appropriate supporting *Software* and products;
 - (ii) *Your* operation of the supporting *Software* and products as directed by *Us* from time to time including the installation of any required *Updates* or *Upgrades*.

You acknowledge and agree that *We* cannot guarantee the operation of any product accessed through the *Online Services* where *You* do not meet the above conditions.
- (f) *You* must provide *Us* with the information *We* request of *You* to ensure accurate configuration of *Your* access to the *Online Services*.

5.2 Online Services Fees

- (a) *You* must pay to *Us* the *Service Setup Fee* once only and the *Service Subscription Fee* for the *Initial Term* and for any commenced *Renewal Term* (even if access to the *Online Services* is terminated (by *You* or by *Us*) before the expiration of the *Initial Term* or before the expiration of any commenced *Renewal Term*).
- (b) All fees are payable from the original date of the *Sales Order* regardless of whether *You* have commenced accessing the *Online Services* or not.

5.3 **Online Services Updates and Upgrades**

We reserve the right to Update or Upgrade the Online Services at any time without notice. All rights declared within the Contract (including all Intellectual Property Rights) also apply to any future Updates or Upgrades to the Online Services.

5.4 **Online Services Content**

- (a) *You must not remove, obscure, or alter Our copyright notice, trade marks, or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Online Services.*
- (b) *We reserve the right to use any information generated through the Online Services in future product offerings or services.*
- (c) *You acknowledge that We do not and cannot review the content of any electronic or print communication created by You and We are not responsible for such content. We reserve the right to delete, move or edit any content (including content posted in any future chat room or blog areas we create) that comes to Our attention that We determine in Our sole discretion, to violate these General Terms, or is otherwise deemed unacceptable by Us.*

5.5 **Online Services Passwords**

We encrypt all passwords used in conjunction with the Online Services. You are responsible for maintaining the security of Your password. We are not liable for any damage that arises due to Your negligence in securing Your password.

Reading Directions:

If you have subscribed to the BackMEup™ product, please read clause 6.

If you have subscribed to the Set And Forget Marketing™ product, clause 7.

If you have subscribed to the Online Booking through the Online Services, please read clause 8.

If you have subscribed to the Shortcuts Scorecard™ product, please read clause 9.

If you have subscribed to the Shortcuts Spotlight™ product, please read clause 10.

If you have subscribed to the GiftME™ product, please read clause 11.

Generally applicable terms and conditions continue with clause 12.

6. **BackMEup™ Additional Terms and Conditions**

The following terms and conditions are applicable to *Your Contract* with *Us* if *You* have subscribed for the *BackMEup™* product:

6.1 **BackMEup™ Service**

- 6.2 *We will configure a service whereby the Shortcuts Point of Sale™ database (Information including sales, clients, configuration, and other related information) shall automatically be backed up to a secure location up to 3 times a day, depending on trading hours. This backup shall only contain the information in the Shortcuts Point of Sale™ database and not any marketing letters, custom reports, attachments or other files on Your computer system.*

6.3 **BackMEup™ E-mail Notifications**

- (a) *We will configure the service to send an e-mail notification to Your nominated e-mail address when successful backups have been completed. These e-mail notifications are critical to ensure that You are aware of the status of the BackMEup™ service.*
- (b) *You must maintain a valid configured e-mail address to be used for any notices to You regarding the status of the BackMEup™ service. We may assist You with obtaining and setting up an e-mail address for a nominal fee.*

6.4 **Internet Service**

- (a) *You* must maintain an internet service with a third party internet service provider that provides *You* with a minimum of 1 GB of uploaded data per month for the *BackMEup™* service in addition to *Your* regular usage.
- (b) *You* are responsible for monitoring the total monthly download/upload. *You* may need to liaise with *Your* internet service provider.
- (c) *You* are responsible for any charges related to the internet service including charges for excess usage.

6.5 **BackMEup™ Configuration**

- (a) *You* are responsible for ensuring that the *BackMEup™* service is reconfigured correctly to take into account any changes to *Your* e-mail address, e-mail password or internet service provider. *Shortcuts Help Desk Services* are available at no charge to *You* to assist *You* to reconfigure the *BackMEup™* service.
- (b) A user account with administrative privileges shall be created by *Us* for sole use by the *BackMEup™* service. It is *Your* responsibility to make sure this account is not altered or adjusted in any way.
- (c) *We* will require *Your* e-mail username and password to setup *Your* e-mail notification. In some cases *We* may not be able to setup *BackMEup™* without this information. Please make sure *You* have *Your* e-mail username and password handy on the day of installation.

6.6 **BackMEup™ Monitoring**

- (a) *You* are responsible for monitoring the status of the *BackMEup™* service and confirming that successful backups are occurring through e-mail notifications received under clause 6.3. *Shortcuts Help Desk Services* are available at no charge to *You* to assist *You* if *You* believe for any reason that data is not being successfully backed up through the *BackMEup™* service.
- (b) *We* are not responsible for unsuccessful backups due to *You* failing to meet any of the above responsibilities.

6.7 **Onsite Backup**

You must ensure to continue to back up *Your* data daily to a USB device or equivalent. This service is not designed as a replacement for this backup process.

6.8 **Data Restoration**

We will provide assistance to *You* to restore backed up data and re-configure the *BackMEup™* service in the event of failure of the computer system hosting *Your Shortcuts Point of Sale™* database. *We* will perform the work described under this clause at no additional cost to *You* up to two (2) times per calendar year. Additional work shall be charged at the prevailing time and material rates.

7. **Set & Forget Marketing™ Additional Terms and Conditions**

The following terms and conditions are applicable to *Your Contract* with *Us* if *You* have subscribed for the *Set & Forget Marketing™* product:

7.1 **Set & Forget Marketing™ Service**

We will provide a service whereby information in the *Shortcuts Point of Sale™* product may be used for the purposes of online marketing by *You*. This service is provided by *Us* in partnership with a third party partner of *Our* choice (*Our Third Party Partner*) and provides marketing tools, information, information management and storage and support. *You* can create and send e-mail campaigns using the tools to distribute content supplied by the user to e-mail addresses contained within the *Shortcuts Point of Sale™* product.

7.2 Set & Forget Marketing™ Content

You acknowledge that *Our Third Party Partner* and *We* do not create any content other than the pre-written promotional copy content and generic HTML templates and that *Our Third Party Partner* and *We* are not the author or the publisher of any user campaigns. *Our Third Party Partner* and *We* do not and cannot review the content of e-mail, SMS or print communication created by users neither *Our Third Party Partner* or *Us* are responsible for such content. *We* reserve the right to delete, move or edit any content (including content posted in any future chat room or blog areas we create) that comes to the attention of *Our Third Party Partner* or *Us* and that *We* or *Our Third Party Partner* determine in *Our* sole discretion, to violate these *General Terms*, or is otherwise deemed unacceptable by *Us*.

7.3 Website Set & Forget Marketing™ Terms and Conditions of Use

In addition to the *General Terms*, use of *Set & Forget Marketing™* is also governed by additional terms and conditions available at <http://www.shortcuts.com.au/setandforget/terms> (*Website Set & Forget Marketing™ Terms and Conditions of Use*) as they exist or are varied from time to time with any changes automatically included regardless of whether they have been viewed or reviewed by *You*.

- (a) *We* will notify *You* of any changes to the *Website Set & Forget Marketing™ Terms and Conditions of Use* through the *Set & Forget Marketing™* service logon page or by another method that *We* consider appropriate.
- (b) Upon receipt of notice of any changes to the *Website Set & Forget Marketing™ Terms and Conditions of Use*, *You* must provide written notice to *Us* within 5 business days of receipt of such notice, if *You* do not agree with any changes to the *Website Set & Forget Marketing™ Terms and Conditions of Use*. Such notice must indicate which changes to the *Website Set & Forget Marketing™ Terms and Conditions of Use* are unacceptable. *We* may then at *Our* option:
 - (i) vary the *Website Set & Forget Marketing™ Terms and Conditions of Use* for all users of the *Set & Forget Marketing™* service; or
 - (ii) provide an amendment to the *Website Set & Forget Marketing™ Terms and Conditions of Use* that shall apply only to *You*;

You may terminate the *Contract* if *We* and *You* are unable to come to an agreement regarding the changes to the *Website Set & Forget Marketing™ Terms and Conditions of Use* within (30) days after the original notice.

7.4 Additional Obligations for Customers using the Included Advertising Option

If *You* have subscribed for *Our* the *Set & Forget Marketing™* product with an option that provides for the inclusion by *Us* of advertising in broadcasted e-mails as a means of supporting the *Set & Forget Marketing™* product, then *We* reserve the right to terminate *Your Set & Forget Marketing™ License*, twelve (12) months after the commencement of this *Contract* where *You* have not satisfied the above terms and conditions or where *You* have not sent at least one (1) campaign in the previous two (2) calendar months.

8. Online Booking Additional Terms and Conditions

The following terms and conditions are applicable to *Your Contract* with *Us* if *You* have subscribed for *Online Bookings* through the *Online Services*, including but not limited to *Our BookME™*, *Site Directory* and *Mobile Application* products:

8.1 Online Booking Service

We will provide a service whereby the *Shortcuts Point of Sale™* will be linked to an online service where *Your* clients may book appointments with *You* without requiring the intervention of *Your* employees. *Your* employees may later confirm or reject the appointments through the *Shortcuts Point of Sale™*.

8.2 Online Booking Content

We reserve the right to place advertising on any page that makes up the *BookME™* or *Site Directory* services.

8.3 Online Booking Fees

In addition to any other fees for access to the *Online Services*:

- (a) You must pay to Us the *Online Booking Fee* for each *Online Booking* made through the *Online Services* in excess of any *Online Bookings* covered by your *Service Subscription Fee*.
- (b) We will calculate the total *Online Booking Fees* payable in each calendar month and direct debit Your account the total within 14 days of the end of each respective calendar month.

8.4 Additional Obligations for mybooker™ Customers

The following terms and conditions are applicable to *Your Contract* with Us if You have subscribed for *Online Bookings* through the *Online Services* in connection with a mybooker™ *License*.

- (a) You must maintain Your subscription for *Online Bookings* for a minimum *Initial Term* and ensure that at least 75% of Your appointment book employees and opening hours is available for use with *Online Bookings* at all times;
- (b) At any time six (6) months after the commencement of this *Contract* where You are not receiving at least ten (10) *Online Bookings* in each calendar month, we will provide You with notice imposing a new minimum total *Online Booking Fee* payable equivalent to ten (10) *Online Bookings* in each calendar month. Upon receipt of this notice, You may terminate the *Contract* by providing Us with written notice within (30) days after the original notice; otherwise the new minimum total *Online Booking Fee* shall apply.

8.5 Website BookME™ Terms and Conditions of Use

In addition to the *General Terms*, use of *BookME™* is also governed by the additional terms and conditions available at <http://www.shortcuts.com.au/bookme/terms> (*Website BookME™ Terms and Conditions of Use*) as they exist or are varied from time to time with any changes automatically included regardless of whether they have been viewed or reviewed by You.

- (a) We will notify You of any changes to the *Website BookME™ Terms and Conditions of Use* through the *BookME™* service logon page or by another method that We consider appropriate.
- (b) Upon receipt of notice of any changes to the *Website BookME™ Terms and Conditions of Use*, You must provide written notice to Us within 5 business days of receipt of such notice, if You do not agree with any changes to the *Website BookME™ Terms and Conditions of Use*. Such notice must indicate which changes to the *Website BookME™ Terms and Conditions of Use* are unacceptable. We may then at Our option:
 - (i) vary the *Website BookME™ Terms and Conditions of Use* for all users of the *BookME™* service; or
 - (ii) provide an amendment to the *Website BookME™ Terms and Conditions of Use* that shall apply only to You.

You may terminate the *Contract* if We and You are unable to come to an agreement regarding the changes to the *Terms and Conditions of Use* within (30) days after the original notice.

9. Shortcuts Scorecard™ Additional Terms and Conditions

The following terms and conditions are applicable to *Your Contract* with Us if You have subscribed for Our *Shortcuts Scorecard™* product:

9.1 Shortcuts Scorecard™ Service

We will provide a service whereby the *Shortcuts Point of Sale™* will be linked to the *Online Services* and key performance indicators will be calculated and reported to you through the *Online Services* online web console.

9.2 Shortcuts Scorecard™ Content

Whilst We make all reasonable efforts to ensure the integrity of the data reported through *Shortcuts Scorecard™*, You acknowledge that the accuracy of the reported data is dependent on the data provided by linked *Shortcuts Point of Sales™* and that no warranties are provided by Us in this regard.

10. Shortcuts Spotlight™ Terms and Conditions

The following terms and conditions are applicable to *Your Contract* with *Us* if *You* have subscribed for *Our Shortcuts Spotlight™* product:

10.1 Shortcuts Spotlight™ Service

We will provide a service whereby the *Shortcuts Point of Sale™* will be linked to the *Online Services* and automatically contact your customers for the purposes of allowing your customers to review and rate your business. Management of the customer reviews and ratings is available through the *Online Services* online web console.

10.2 Shortcuts Spotlight™ Content

You acknowledge that *We* are not the author or the publisher of any customer ratings or reviews. *We* do not and cannot review the content of customer ratings and reviews and *We* are not responsible for such content. *You* are responsible for reviewing and monitoring customer reviews and ratings through the *Online Services* online web console. *We* reserve the right to delete, move or edit any content that comes to *Our* attention and that *We* determine in *Our* sole discretion, to violate these General Terms, any United States Privacy Act, or is otherwise deemed unacceptable by *Us*.

11. GiftME™ Additional Terms and Conditions

The following terms and conditions are applicable to *Your Contract* with *Us* if *You* have subscribed for *Our GiftME™* product:

11.1 GiftME™ Service

We will provide a service whereby the *Shortcuts Point of Sale™* will be linked to the *Online Services* to enable gift cards to be activated and redeemed through the *Shortcuts Point of Sale™* and shared across nominated point of sale locations.

11.2 GiftME™ Settlement and Reconciliation

- (a) *You* are responsible for collection and settlement of all funds relating to the sale of a gift card and any sale related processing costs, such as any credit card charges or bank service charges, where applicable.
- (b) *You* accept responsibility to provide any policies for decrementing unredeemed and expired gift cards to account for service charges or other fees that may be allowed to be claimed and to ensure that these policies will comply with any applicable United States and International laws in relation to the same.

11.3 GiftME™ Fees

In addition to any other fees for access to the *Online Services*:

- (a) *You* must pay to *Us* the *Gift Card Activation Fee* for each gift card activated through the GiftME™ product.
- (b) If *You* have elected to allow gift card top-ups in the *Sales Order*, *You* must pay to *Us* the *Gift Card Transaction Fee* for each gift card in a transaction where additional funds are added to the balance of the gift card through the GiftME™ product.
- (c) *You* must pay to *Us* the *Gift Card Manual Processing Fee* for each telephone request to *Help Desk Services* where the request is made on the priority line for the manual adjustment of the balance of a gift card by *Us*.
- (d) *We* will calculate the total *Gift Card Activation Fees*, *Gift Card Transaction Fees* and *Gift Card Manual Processing Fees* payable in each calendar month and direct debit *Your* account the total within 14 days of the end of each respective calendar month.

12. Hardware Waiver

- 12.1 *We can provide You with a fully integrated solution to run Your salon management software by providing you with the latest model Hewlett-Packard PC (or such other model as notified by Us), with a choice of a quality monitor and peripherals. By buying a complete software and hardware package from Us, We can ensure that all components work successfully together and are supported as a complete technology solution.*
- 12.2 The *Software* requires certain components of the *Windows* operating system to be fully functional. The operating system usually comes preloaded on *Your* computer. If *You* are supplying *Your* own computer, it is *Your* responsibility to:
- (a) ensure that all components are working correctly;
 - (b) ensure that *Your* hardware meets *Our* minimum required specifications to run the *Software*.
 - (c) ensure that the professional, business or equivalent edition of the *Windows* operating system is installed (Not home or personal editions).
- 12.3 *You* acknowledge and agree that *We* are unable to provide *You* with any assistance or technical support in the setting up or servicing of *Your* own hardware. Should a problem arise with the operation of the *Software* and it is found to be caused by a problem with *Your* hardware or operating system, *You* further acknowledge that:
- (a) *We* have the right to charge *You* for any time *We* have spent trying to rectify the issue at an hourly rate of \$139.00 per hour;
 - (b) *We* may deduct time spent waiting for hardware to be ready from *Your* training hours if hardware is not ready when training is due to commence. If scheduled training cannot be done on the day and another time for training needs to be rescheduled, you are required to provide Shortcuts a reasonable period of time to reschedule training and allocate resources to accommodate such request. If you cancel or change within 48 hours of your booked training for any reason, we will deduct 50% of the scheduled training time.

13. Education Waiver

- 13.1 The following services will be offered for purchase by *You* as part of the service offering to *You*:
- (a) software configuration;
 - (b) Remote access Installation assistance via the web; and
 - (c) 6 hours training (live educator training conducted over the phone via a web interface)
- (collectively, *Configuration, Installation and Training Services*).
- 13.2 If *You* agree to purchase the *Configuration, Installation and Training Services* from *Us*, this will be noted on the *Sales Order*.
- 13.3 *Our* experience has shown that problems are most likely to occur when configuration, on-site installation and training are not carried out by *Our* professional team. Where *You* do not agree to purchase the *Configuration, Installation and Training Services*, *You* hereby acknowledge and agree with *Us* that the *Help Desk Services* is not for training purposes and *We* will not be obliged to provide any services to *You* of the *Configuration, Installation and Training* kind without payment of an additional fee by *You*.

14. Miscellaneous Terms and Conditions

The following provisions apply to all *Contracts* regardless of whether the *Contract* is for the grant of a *License* of *Software Products*, access to the *Online Services* or the sale of goods.

14.1 Entire Agreement

The *Contract* represents the entire understanding between the parties hereto with respect to the matters contained herein and, except as otherwise provided in the *Contract*, it may be amended only by an instrument in writing signed by both parties hereto.

14.2 **Governing Law and Choice of Forum**

The *Contract* shall be governed in all respects by the laws of the State of California as they apply to agreements entered into and to be performed entirely within California between California residents, without regard to conflict of law provisions. *You* agree that any claim or dispute *You* may have against *Us* must be resolved exclusively by a state or federal court located in Orange County, California. *You* agree to submit to the personal jurisdiction of the courts located within Orange County, California for the purpose of litigating all such claims or disputes.

14.3 **Illegality and Unenforceability**

Where any provision of the *Contract* is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in the *Contract* and the parties must attempt to replace that severed part with a legally acceptable alternative clause that meets the parties' commercial objectives.

14.4 **Amendment**

No amendment to the *Contract* has any force unless it is in writing and signed by *You* and *Us*.

14.5 **Force Majeure**

Notwithstanding any other provision of the *Contract*, neither *You* or *Us* shall be liable to each other for any failure, inability to perform, or delay in performance hereunder, if such failure, inability, or delay be due to acts of God, war, civil commotion, governmental action, fire, explosions, strikes, other industrial disturbances, equipment malfunction that is beyond its reasonable control, or any other cause that is beyond its reasonable control.

14.6 **Intellectual Property**

- (a) *You* acknowledge that all the *Intellectual Property Rights* in all *Materials* and the *Online Services* belong to *Us*.
- (b) *You* must not do, or permit any act which infringes the *Intellectual Property Rights* in any *Materials* or the *Online Services* provided or licensed to *You*.
- (c) The *Materials* or any part of the *Online Services* must not be copied under any circumstances, except as expressly authorized by the *Contract*.
- (d) *You* must not reverse engineer, decompile, disassemble or modify the *Materials* nor attempt in any manner to obtain the source code to any *Software* forming part of the *Materials*.
- (e) *You* must not allow the *Materials* to be combined with or incorporated into other software.
- (f) *You* must indemnify *Us* fully against all liabilities, damages, costs, debts, claims and expenses which *We* may incur or suffer to a third party as a result of the *Your* breach of this clause 14.6.

14.7 **Third Party Licenses**

You are responsible for reading and complying with the licensing agreements of any third party software used in relation to the *Software*. This includes the *Windows* licensing agreement and licensing agreements for any other software provided to *You*.

14.8 **Confidential Information**

You agree that *You* will not:

- (a) disclose any of the *Confidential Information* to any other party without *Our* prior written consent unless *You* must disclose such information pursuant to an order of a court; or
- (b) use any or all of the *Confidential Information* for any purpose other than that specified by *Us*.

14.9 **Liability**

Our liability for breach of any term of this *Contract*, whether implied or otherwise, will be limited, at *Our* option, to any one or more of the following:

- (a) the replacement of goods or services to which the breach relates or the supply of equivalent goods or services;
- (b) the repair of such goods (if applicable);
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired or the services supplied again (as applicable).

In no case will the total amount expended on any, or all, of the above exceed the total *Monthly Fees*, paid by *You* over the previous six (6) months less any rebates provided by *Us* to *You*.

For greater certainty WE WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS CONTRACT OR IN ANY WAY RELATED TO THE SERVICES OR CONSULTING SERVICES, INCLUDING LOSS OF REVENUE, PROFITS OR DATA (INCLUDING DUE TO A VIRUS OR OTHERWISE), FAILURE TO REALIZE EXPECTED SAVINGS, OR CLAIMS AGAINST YOU BY ANY THIRD PARTY, EVEN IF WE ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THESE LIMITATIONS WILL APPLY REGARDLESS OF HOW THE CLAIM ARISES, INCLUDING FOR BREACH OF CONTRACT OR NEGLIGENCE. WE WILL ALSO NOT BE RESPONSIBLE FOR ANY FAILURE TO PERFORM DUE TO ANY EVENTS BEYOND OUR CONTROL (INCLUDING FAILURES OF THE INTERNET).

14.10 **Limited Warranty**

Any *Software* and/or related services to be provided, as applicable, shall substantially conform to all written specifications applicable thereto, including but not limited to performing the functions described in the Documentation as updated from time to time. Any *Software* and/or related services will not contain any viruses and services will be completed in a professional and workmanlike manner in accordance with industry standards. The service level for the *Software* will be available 24/7 and have a reasonable uptime.

14.11 **No Representations**

You acknowledge that the *Materials* cannot be guaranteed error free and *You* acknowledge that the existence of any such errors shall not be a breach of the *Contract* once corrected in accordance with the warranty. *You* acknowledge that *You* have exercised *Your* independent judgement in acquiring the *Software* and agreeing to subscribe for access to the *Online Services* or products from *Us* and *You* have not relied on any representation made by *Us* or any of our agents or representatives which has not been stated expressly in the *Contract*. *You* further acknowledge and agree that *You* have not relied upon any descriptions or illustrations or specifications contained in any document (other than the *Contract*) including catalogues or promotional material produced or provided by *Us* and no warranty or representation, express or implied, is given by *Us* in relation to any such descriptions, illustrations or specifications contained in any document (other than the *Contract*), catalogues or promotional material.

EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT, WE DISCLAIM ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY AND CONDITION OF MERCHANTABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITATION, SUPPLIER DOES NOT WARRANT THAT THE SERVICES OR TRAINING WILL MEET ALL OF CUSTOMER'S REQUIREMENTS, OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. WE ALSO MAKES NO WARRANTIES REGARDING THE THIRD PARTY COMPONENTS. THE PARTIES AGREE THAT IT IS YOUR RESPONSIBILITY TO DETERMINE IF THE SERVICES ARE SUITABLE FOR CUSTOMER'S REQUIREMENTS.

14.12 Privacy

- (a) *We shall ensure that, in the performance of Our obligations under the Contract, We will at all times comply with any privacy law or regulation as shall be applicable to the Contract or information collected or stored as a result of the implementation of use of the Online Services*
- (b) *You acknowledge that the use of the Online Services will create a data base comprising records of Your customers. The data base records stored on Your behalf shall remain Your property. Access of these data base records may only be performed through the Online Services. You agree to pay to Us an administrative fee (calculated based on Our prevailing hourly rates for the time taken by Us) if You want Us to provide You with a report or listing of the database or to purge records for You.*
- (c) *We will not disclose or grant access to any data base records held on Your behalf to any third party except as may be required for the benefit of and as approved in writing by You or in the performance of Our obligations under the Contract or otherwise as directed in writing by You or as ordered by a court of competent jurisdiction or Government Authority.*
- (d) *You acknowledge and agree that We may aggregate data base records held on Your behalf into a separate data base of information, which shall be Our property. Such aggregation of data base records shall remove any information that may personally identify You or Your clients.*

14.13 Breach and Software and Services Cessation

- (a) *You acknowledge and agree with Us that any failure by You to make a payment to Us pursuant to the terms of the Contract, or any other agreement to which You may be party with Us, within the time required, shall amount to a material breach of the Contract. In such an event, We may, in Our discretion, send a written notice to You terminating the Contract.*
- (b) *We may at any time after You fail to pay any fee or other moneys payable to Us under the Contract (in each case, a Payment Default) give notice to You that the continued use and operation of the Software products and access to the Online Services provided by Us to You pursuant to the Contract shall immediately cease on and from the date which is 60 days from the date of the first Payment Default (Software and Services Cessation).*
- (c) *We shall be entitled, without the requirement of any further notice to You, unless You pay to Us the amount of all unpaid fees including interest accrued thereon pursuant to the terms of this Contract (collectively, Outstanding Amounts), to implement such procedures and steps as are necessary to enforce a Software and Services Cessation and prevent any further operation of the Software and the Online Services.*
- (d) **IN NO EVENT WILL WE, OUR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, SUCCESSORS, ASSIGNS OR AFFILIATES BELIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, PUNITICE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS OF ANY KIND, OR ANY OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, OR THE LIKE) AS A RESULT OF OR IN CONNECTION WITH THE USE OR CESSATION OF SOFTWARE AND SERVICES, WHETHER SUCH LOSS OR DAMAGE IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF WE OR OUR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND ON ANY THEORY OF LIABILITY. YOU ACKNOWLEDGE THAT WITHOUT YOUR AGREEMENT TO THESE LIMITATIONS IT WOULD PAY A HIGHER LICENSING FEE FOR THE SOFTWARE.**
- (e) *Nothing in clauses 14.13(b) and 14.13(c) shall prevent Us from exercising any other rights and powers that We may have against You in relation to the Outstanding Amounts and for breach of this Contract. The Outstanding Amounts will continue to accrue interest until paid for in full.*
- (f) *Upon termination of the Contract by Us for any reason, any other license agreements and other agreements which You and We may have entered into and which do not currently form part of the Contract may be terminated by Us by written notice to the You.*
- (g) *Irrespective as to whether We elect to terminate the Contract, or any other agreement to which You may be party with Us, We shall, in the event of breach of the Contract by You, be entitled to recover from You any unpaid monies and/or damages for breach.*

14.14 Termination

- (a) The *Contract* may be terminated by *Us* in the following circumstances:
- (i) if *You* are in breach of any term of the *Contract*, and such breach is not remedied within thirty (30) days of written notice of the breach;
 - (ii) if *You*, being a corporation, become the subject of *Insolvency Proceedings*;
 - (iii) if *You*, being a firm or partnership, are dissolved; or
 - (iv) if *You* destroy the *Materials* for any reason.
- (b) The *Contract* may be terminated by *You*, provided that:
- (i) *You* have given *Us* at least thirty (30) days prior written notice of termination;
 - (ii) such notice must be in writing and may only be given after the expiry of the *Initial Term*; and
 - (iii) *You* pay the balance of fees due for the balance of the *Initial Term* and any commenced *Renewal Term* as if the *Contract* had not been terminated.

For the avoidance of doubt, *You* may not verbally terminate the *Contract*.

14.15 Consequences of Termination

- (a) Upon termination, *You* must, immediately cease use of the *Software*, *Documentation*, and any other *Confidential Information*, and within 14 days, shall irretrievably delete and/or remove such items from computer terminals, workstations, and data files or otherwise return or dispose of such material as directed by *Us*. *You* further agree to erase *Software*, *Documentation* and *Confidential Information* from any storage media. *You*, or anyone on *Your* behalf with express authority to make such representation, shall verify in writing to *Us* that *You* have performed the foregoing within such 14 day period.
- (b) Termination shall not affect any rights or remedies which *We* may have otherwise under the *Contract* or at law.
- (c) Clauses 14.6, 14.7, 14.8, 14.10, 14.11 and 14.13 and will continue to apply despite termination of the *Contract*.

14.16 Transfer and Assignment

- (a) *You* must not assign, sub-license or transfer the *Contract* or any interest hereunder to any other person (**New Party**) without *Our* prior written consent, which consent will only be given by *Us* when the following conditions are met:
- (i) all original and backup copies of the *Software* and the *Documentation* are transferred permanently at no charge to the *New Party*, excluding consideration for any sale of the *Your* business; and
 - (ii) the *New Party* agrees in writing to be bound by all the terms of the *Contract*.
- (b) *You* will remain liable for any breach of the *Contract* until the requirements in clause 14.16(a) are satisfied.

14.17 Notice

- (a) Whenever the *Contract* requires or permits any notice, requests, or demand from one party to another, the notice, request, or demand must be in writing to be effective and will be sent to the recipient by hand, pre-paid post or by facsimile (fax). Nothing in this clause prevents a *Sales Order* being verbally accepted in accordance with clause 2.2.
- (b) A notice or other communication will be taken to be duly received:
- (i) if sent by messenger, when left at the address of the recipient;
 - (ii) if sent by pre-paid post, 2 days (if posted to an address in United States) or 4 days (if addressed elsewhere) after the date of posting;
 - (iii) if sent by fax, upon receipt by the sender of an acknowledgment generated by the machine from which the fax was sent indicating that the fax was sent to the recipient's fax number without error.
- (c) For notices sent by messenger, or pre-paid post to *Us*, the notice must be delivered or addressed to *Our* business address as specified in the *Sales Order* or such other address *We* may notify *You* of in lieu of *Our* business address.

14.18 Taxes

All fees payable by *You* pursuant to the *Contract* are exclusive of taxes, duties and charges, unless otherwise stated, imposed or levied in the United States of America or overseas in connection with the supply and installation of the *Software* and *Documentation* and access to the *Online Services* and *Maintenance*. Without limiting the foregoing, *You* will be liable for any taxes, duties or charges imposed subsequent to the date of the *Sales Order*, in respect of the goods and services which are the subject of the *Contract*. For the avoidance of doubt, *You* must pay to *Us* an amount on account of sales tax at the appropriate rate in respect of the supply of the *Software* and access to the *Online Services* or *Maintenance*.

14.19 Interest on Overdue Amounts

You must pay interest on all late payments which are due pursuant to the *Contract* at the rate of 15% per annum. Interest will commence to accrue from the due date of the relevant payments.

14.20 NSF (Non-Sufficient Funds)

Checks received for payment and returned by Bank as NSF will not be resubmitted. A \$25 NSF fee will be charged.

14.21 Late Payment Fee

If outstanding balance owed to *Us* is not paid current by the end of each calendar month for which for which payment is due a \$15 fee will be assessed.

14.22 Re-instatement Fee

If *You* are placed on No Support (i.e. suspension of Maintenance Services) due to overdue outstanding balances, pays its outstanding balances current and requests to have its Maintenance Services re-instated, a \$25 fee will be assessed.

14.23 Re-stocking Fee

In the event that *You* request to return goods that are not defective, *We* reserves the right to charge *You* a re-stocking fee equivalent to the greater of \$20 or 15% of the invoice price.

14.24 Where Payment is Made by Third Party

You acknowledge and agree that the *Contract* is between *You* and *Us* and notwithstanding that a person other than *You* including, for example, a franchisee (a *Third Party*) agree to pay fees or other moneys payable by *You* to *Us* or provides *Us* with a *Monthly Deduction Authority*, the *Third Party* will not obtain any legal or equitable rights or powers of any kind whatsoever under the *Contract* or to the *Software* and the *Online Services* and that *You* will remain liable for all moneys due to *Us* under the *Contract*. *You* agree to provide a copy of the *General Terms* to each *Third Party*. *We* will not be liable to any *Third Party* if *We* terminate the *Contract* or otherwise exercise our rights under clause 14.13. *You* agree to indemnify *Us* for all costs, debts, liabilities, claims and damages incurred by *Us* as a result of any action, demand or proceeding brought or made against *Us* by any *Third Party* including, but not limited to, any promise, agreement or representation made or given by or on *Your* behalf to any *Third Party* contrary to the provisions of this clause 14.24.

15. Definitions and Interpretation

In these *General Terms*, unless the context otherwise requires:

Confidential Information means, in relation to *Us* and any of *Our* related bodies corporate all information disclosed to *You*, that is not in the public domain and which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential;

Contract means the agreement between *You* and *Us* for the supply of goods, services and any *License* of *Software* comprising these *General Terms*, the *Sales Order* and any variations to these *General Terms* which are recorded in writing and signed by *Us* and *You* and where applicable includes the *Website BookME™ Terms and Conditions* and the *Website Set & Forget Marketing™ Terms and Conditions* referred to in clauses 7.3 and 8.5;

Cooling Off Period means the period commencing on the date appearing on the *Sales Order* and ending at 5pm (California time) on the date which is seven (7) days from the date appearing on the *Sales Order*;

Documentation means any electronic or printed material designed to assist the parties in the operation of the *Software*;

Fair Use Policy means the limitations on *Help Desk Services* applicable where no *Help Desk Service Fee* is payable as described in clause 4.3.

General Terms means the terms and conditions contained in this document, as varied from time to time;

Gift Card Activation Fee means the fee per gift card activation specified in the *Sales Order*.

Gift Card Manual Processing Fee means the fee per request to *Help Desk Services* on the priority telephone line to manually process a gift card transaction specified in the *Sales Order*.

Gift Card Transaction Fee means the fee per chargeable gift card transaction specified in the *Sales Order*

Government Authority means any government, governmental, semi-governmental, administrative, public, regulatory or judicial entity, body or authority;

Help Desk Service Fee means, where applicable the fee charged for access to *Help Desk Services* specified in the *Sales Order*;

Help Desk Services means any and all of telephone, facsimile, e-mail and website support services made available to the *Subscriber* to:

- (a) answer questions and give technical assistance about the installation, use and support of the *Software*; and
- (b) log reports of errors and advise on progress with the correction of those errors;

Initial Term means the period commencing on the date that the *Software*, *Surebiz™ Maintenance Services* or access to the *Online Services* is supplied to *You* and ending on the date which is three (3) years thereafter;

Insolvency Proceedings means:

- (a) an administrator is appointed to *You* under any applicable bankruptcy law;
- (b) a receiver or receiver and manager is appointed over any of *Your* assets;
- (c) a liquidator is appointed to *You*; or
- (d) a winding up application is brought against *You*;

Intellectual Property Rights means any and all intellectual and industrial property rights throughout the world including rights in respect of, or in connection with any *Confidential Information*; copyright; moral rights; inventions (including patents); trademarks; service marks; designs; and circuit layouts, whether or not now existing and whether or not registered or registerable, and includes any right to apply for the registration of such rights and includes all renewals and extensions;

License means the license granted under clause 3.1 of these *General Terms*;

License Term means the term of the *Contract* starting from the date on which the *Software* is supplied to *You* and continuing until this *Contract* is terminated in accordance with the termination provisions in clause 14.14;

Licensee means the person named as the Licensee in the *Sales Order*;

Maintenance Fee means the recurrent fee specified in the *Sales Order* which are payable by *You* in respect of ongoing *Surebiz™ Maintenance Services*;

Maintenance Initial Term means the period commencing on the date that *You* subscribe to *Surebiz™ Maintenance Services* and ending on the date which is one (1) year thereafter;

Maintenance Renewal Term means each further term of one (1) year commencing immediately after the end of the *Maintenance Initial Term* and thereafter, immediately after the end of each preceding *Maintenance Renewal Term*;

Maintenance Term means the *Maintenance Initial Term* plus any *Maintenance Renewal Term* (where the *Maintenance Initial Term* has lapsed);

Materials means the *Software* and the *Documentation*;

Monthly Deduction Authority means the form for monthly direct debits from a nominated credit card or bank account in the format provided by *Us*;

Online Booking means a an appointment for services booked with *You* by *Your* customer or prospective customer using the *Online Services*;

Online Booking Fee means the transaction fee per *Online Booking* specified in the *Sales Order*;

Online Services means the online services to be provided by *Us* as pursuant to the *Contract* identified in the *Sales Order*, including any current or future product or service provided by *Us* that requires a connection with *Our* systems hosted on the Internet;

Party means either *Us* or *You* as the context dictates;

Sales Order means the document entitled "Sales Order" which is provided by *Us* to *You* and sets out, amongst other things, the *Software* and access to the *Online Services* to be provided by *Us* and the fees and charges payable by *You*;

Renewal Term means each further term of one (1) year commencing immediately after the end of the *Initial Term* and thereafter, immediately after the end of each preceding *Renewal Term*;

Rental License Fee means the total fees payable by *You* on a recurrent basis in consideration of the *License* of *Software* and *Maintenances Services*, and which are in the amounts more particularly described in the *Sales Order*;

Resubscriber Maintenance Surcharge means the charges specified in the *Sales Order*, which are payable by *You* in respect of the *Surebiz™ Maintenance Services* for any *Maintenance Renewal Term* or in respect of *You* agreeing to re-subscribe for the *Surebiz™ Maintenance Services* after *You* have sought to terminate such *Surebiz™ Maintenance Services* pursuant to clause 4.1;

Scheduled Maintenance means periods of time where the *Online Services* or *Software* is unavailable due to activities required to be undertaken by *Us* to ensure the ongoing stability and performance of the *Online Services* or *Software*.

Service Setup Fee means the once off fee referred to in the *Sales Order* for the setup of *Your* access to the *Online Services*;

Service Subscription Fee means the recurrent fee for ongoing access to the *Online Services* specified in the *Sales Order*;

Shortcuts means Shortcuts Software, Inc. a Delaware corporation;

Shortcuts Point of Sale™ means a software product in *Our Software* product range known as one of "Shortcuts Point of Sale", "Shortcuts Live", "Shortcuts Hair", "Shortcuts Spa", "Shortcuts Walkin", "Shortcuts Beauty", "Shortcuts Clinic" or "Shortcuts School";

Shortcuts Reseller means a third party that has been authorized by *Us* to sell *Our Software* products and access to the *Online Services* on *Our* behalf and to provide additional value added services and products in relation to the use of *Our Software* products and the *Online Services* in the reseller's authorized region;

Software means the computer program(s) supplied by *Us* pursuant to the *Contract* including software provided online, as identified and referred to in the *Sales Order*;

Subscriber means a person who has entered into a *Contract* with *Us* for access to the *Online Services* in exchange for the payment of a *Service Subscription Fee* and the *Service Setup Fee*;

Surebiz™ Maintenance Services means the provision of:

- (a) any *Updates* and *Upgrades* developed by *Us*; and
- (b) *Help Desk Services* during *Our* normal business hours;
- (c) *Help Desk Services* relating to issues critical to the running of *Your* business outside of normal business hours (currently 24 hour by 7 days a week support).

Update means a modification to the *Software* which has been created primarily to overcome defects, errors and/or bugs in the *Software*, but excludes new software developed to provide new functionality;

Upfront License Fee means the total fees payable by *You* in one sum in consideration of the *License* of *Software*, and which are in the amounts more particularly described in the *Sales Order*;

Upgrade means new software developed as a replacement to the existing software which has been created primarily to provide an extension, alteration, improvement or additional functionality to the *Software*, released by *Us* after the commencement of this *Contract*;

We means Shortcuts Software, Inc. and *Our* successors and assigns. **Us** and **Our** has a corresponding meaning;

Windows means the Microsoft® Windows® Operating System;

You means, in relation to each *Contract*, the *Licensee* (in the case of a license of *Software*), the purchaser in the case of a sale of goods, and the *Subscriber* (in the case of access to the *Online Services*) and **Your** has a corresponding meaning.