

IMPORTANT----READ THIS AGREEMENT CAREFULLY

THE FOLLOWING AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU (THE PERSON OWNING AND/OR WHO USES SPOT SOFTWARE (THE "SOFTWARE")) AND SPOT BUSINESS SYSTEMS, LLC, A UTAH LIMITED LIABILITY COMPANY ("SBS"). IT IS DEEMED ACCEPTED BY YOUR USE OF THE SOFTWARE.

SPOT License Agreement

(Effective October 1, 2011)

LICENSE. In consideration of Your payment of the applicable License fee, SBS grants to You the nonexclusive right to use the Software (the "License") strictly limited pursuant to the following terms and conditions. The License is limited for use only on the number of computer workstations at their specifically designated location for which You pay SBS's then designated License fee. There are two different types of Licenses: 1) Purchase (the "Purchase") - a License that is purchased for a designated number of workstations at Your site(s) with a single onetime payment and where Software updates and technical support ("Customer Care") are purchased separately; 2) Service (the "Service") - a License that is leased for a designated number of workstations paid by a monthly fee and includes Customer Care. The terms herein shall apply to both License types and to all Licenses that You now have or may hereafter acquire from SBS and shall apply to the Software and all updates and manuals thereto to which You have or hereafter receive regardless of the medium used to deliver them to You unless such later acquired License contains its own license agreement.

OWNERSHIP. Except as otherwise provided herein, SBS and its licensors are the sole and exclusive owners of the Software. All rights to the Software not expressly granted to You are reserved by SBS. The License is limited to SBS's applicable copyrights and trademarks. You may not distribute, license, sell, lend, transfer or assign the License or Software to others in any manner or permit others to directly or indirectly use the Software or any part of it without the prior written consent of SBS. In particular, You may not permit others to use the Software and/or License through any type of hosting arrangement, whether or not such user owns a License. You may also not act as a reseller of the Software, whether Purchase or Service type, without express written permission from SBS. In addition, the Software may only be used at the physical site registered with SBS and may not be moved to a different site without SBS's prior written consent. You may not remove, modify, or obscure any copyright, trademark or other proprietary rights or notices that are contained in or on the Software or any packaging of the Software.

WEB HOSTING. SBS offers a web hosting program ("Web Hosting"). If You elect to participate in Web Hosting, You are entirely responsible for all information, documents and data (collectively "Content") that You upload, post, email, transmit or otherwise make available via Web Hosting. SBS is not required to review or control such Content and, as such, does not guarantee the accuracy, integrity or quality of such Content. Under no circumstances will SBS be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, transmitted, or otherwise made available via Web Hosting.

You agree to not use Web Hosting to:

- a. upload, post, email, transmit or otherwise make available any Content that is unlawful, in violation of any Federal or state laws, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, pornographic, satanic, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;
- b. harm minors in any way;
- c. post or traffic in government secrets, provide any information or in any way assist or encourage any terrorist activities, provide any information concerning nuclear or biological weapons or other weapons of mass destruction, post or traffic in obscene material, solicit a minor or others for illegal acts, deal drugs, harassment, fraud, stalking, abuse or other subject matters that are prohibited under applicable Federal, state or local laws, rules or regulations; or

- d. infringe the intellectual property rights or other proprietary rights of any third party, including, without limitation, material protected by copyright, trademark, patent, trade secret or other intellectual property rights used with proper authorization. Infringement may result from, among other activities, the unauthorized copying and posting of pictures, logos, software, articles, musical works and videos. You shall comply with the Digital Millennium Copyright Act ("DMCA"). Please send DMCA notifications of any claimed copyright infringements to: spotpos.com/

You agree that SBS may access, preserve and disclose Your account information and Content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to comply with legal process. You acknowledge that SBS may establish general practices and limits concerning use of Web Hosting, including without limitation, the maximum number of days that Content will be retained by Web Hosting, the maximum disk space that will be allotted on servers on Your behalf. You may access Web Hosting in a given period of time. You agree that we have no responsibility or liability for the deletion or failure to store Content maintained or transmitted by Web Hosting. You agree that SBS may if it deems it to be in SBS's best interest and without prior notice, immediately terminate Your Web Hosting.

CONFIDENTIALITY. You acknowledge that the Software is copyrighted and is the property of SBS or SBS's assignor and that it contains valuable trade secrets and confidential information. You agree to hold the Software in confidence, and not to disclose the contents of any Software to any third person. You agree not to directly or indirectly copy the Software, attempt or effectuate any modification, translation, decompiling, disassembling or reverse engineering any part of the Software, including but not limited to any portion of the Software. You agree that SBS may disclose to third licensors of the Software information about Yourself and Your use of the Software.

TERM. If You Purchase a License, then You may continue to use the Software for each workstation for which You paid the Purchase fee. You will acquire updates or modifications to the Software only by subscribing to and paying for SBS's Customer Care program. If You terminate the use of the Services at any workstation(s), You must inform SBS in writing of such termination. SBS has continuing costs and expenses until it receives such termination notice whether or not You use Your workstations. Therefore, Your obligation to pay the License fee shall continue for all terminated workstations through the last day of the calendar month in which the written notice of such termination is received by SBS. If You are using the Software as a Service, then Your License will terminate upon the earliest of: 1) Your giving SBS thirty (30) days prior notice of termination, 2) upon Your failure to pay any applicable continuing License fee or 3) at SBS's election, upon Your breach of the License. Upon termination of the License, You shall immediately cease the use of the Software and SBS may take action to prevent Your use of and/or access to the Software. In the event of a breach of the License by You, SBS shall also have the right to recover all outstanding fees and all damages and losses suffered by SBS or its authorized representatives, agents, employees or distributors.

LIMITED WARRANTY. SBS warrants that the Software will perform substantially in accordance with any written materials produced and supplied by SBS. This limited warranty shall expire and terminate one year after Your initial purchase of the License. Defective Software will at SBS's option, be corrected, replaced or repurchased by SBS.

SALES TAX RESPONSIBILITY. The Software provides functionality to calculate sales tax for Your retail sales and services by using a stored sales tax rate as a configuration option in the Software. In order to prevent unauthorized or inadvertent sales tax rate changes, only SBS technicians are allowed to change this rate, which change must be initiated by written request by You. The sales tax rate, as configured for Your store(s), is generally shown on Your printed invoices AND on the Visual Invoice that is displayed in the Order Pickup view on Your workstations. It is Your responsibility to find the rate on such invoices on a regular basis and verify that such rate is the correct sales tax rate for Your applicable location. It is also Your responsibility to immediately report an incorrect rate and to request a rate change be made if the local tax rate changes. All such reports and requests must be in writing to SBS. SBS is not liable for any damage or loss You may incur as a result of the Software using an incorrect sales tax rate.

LIMITED DAMAGES. YOU ACKNOWLEDGE AND AGREE THAT SBS IS NOT AND SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OR THE LIKE WHICH MAY ARISE AS A RESULT OF A DEFECT IN THE SOFTWARE OR IN CONNECTION WITH YOUR USE OF, OR FAILURE TO BE ABLE TO USE, THE SOFTWARE. ACCORDINGLY, YOU AGREE THAT IN NO EVENT SHALL SBS OR ITS AGENTS, REPRESENTATIVES, DISTRIBUTORS OR SUPPLIERS BE RESPONSIBLE TO YOU OR ANY OTHER PARTY FOR ANY LOST PROFITS, LOST SAVINGS OR OTHER

DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE. THE FACT THAT SBS OR ONE OF ITS AGENTS, REPRESENTATIVES, DISTRIBUTORS OR SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR OF ANY CLAIM BY ANY OTHER PARTY DOES NOT MODIFY THIS LACK OF RESPONSIBILITY.

RELEASE. In the event You use the Software on equipment not approved by SBS or You fail to obtain proper training or use instruction from SBS for the use of the Software, You hereby release SBS from all warranties, obligations, liability, claims or demands relating to the Software. You acknowledge that the warranty limitations set forth in this License are integral to the amount of Your License fee and were SBS to assume any liability in addition to the limited liability set forth in this License, Your License fee would be substantially higher. You hereby disclaim, to the extent permitted by law, all warranties by any third party licensor who provides any portion of the Software and any liability owed by such third party licensor for any damages, whether direct, indirect, or consequential arising or obligation to provide support for portion of the Software attributable to such third party. For those purchasing Customer Care, support for the Software, including that attributable to third parties, shall be provided only by SBS. The Software is not designed nor intended for use in a situation where the Software's failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage. The License does not permit the Software to be used in, or in conjunction with any high risk use. For example, the Software is not be used in aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the U.S. Food, Drug, and Cosmetic Act.

HOSTING. If You have a Service License and are using SBS's hosted server farm or using the Web Hosting, You promise not to use SBS's servers or services in any manner in violation of any state, local or United States law, rule or regulation and promise not to undermine or cause harm to SBS's servers, computers or other clients. Such prohibited use includes, but is not limited to, disseminating, posting or storage of any material in violation of any Federal, state or local law, rule or regulation. You shall use the SBS's servers only in connection with the Software and shall not intentionally or willfully harm SBS's servers or attain or attempt to attain data from SBS's servers other than Your own data. You shall be responsible for ensuring that all passwords, log-in credentials, and all similar access codes provided to You by SBS are kept secret and confidential and not disclosed except to essential personnel. Any unauthorized use or attempted use of an internet account or computer of SBS or its other clients is prohibited. Such acts include "internet scamming" (tricking other people into releasing their passwords), password robbery, security hole scanning, etc. SBS reserves the right to terminate Your License in the event of Your intentional abuse or misuse of the License or Web Hosting service.

SERVICE FEES. If You are utilizing Services or Web Hosting, then You agree to pay SBS's internally designated standard rates for Services and Web Hosting or such other rates agreed to in writing by SBS. SBS has a right to pass through to You all direct cost increases which it incurs in providing the Services and Web Hosting and to otherwise increase the Service fees that You are required to pay. In either event, SBS shall give You at least thirty (30) days prior written notice of such increase before the change goes into effect. Such Service fees are payable in advance on the first business day of each month by ACH (automatic checking account debit). SBS reserves the right to terminate Service if payment is not timely received in this manner. If You have acquired a business that utilized Services and You continue to utilize Services, then in addition to the payment of the on-going Service fee, You also agree to pay, in full, any and all unpaid Service fees owed for such prior Services. You have this obligation regardless as to how the acquisition of this business was structured.

DATA. Your data collected or stored using the Software is owned solely by You. However, SBS reserves the right to withhold Your access to Your data until all outstanding amounts owed to SBS are paid in full. In the event of a transfer or alleged transfer of the business that generate such data, SBS has the right to require such consents as it deems necessary before permitting access to such data. Such collected and stored data will only be retained by SBS for the time period indicated on the following table. You will pay a monthly storage fee for any such storage beyond such dates. Contact SBS's sales office at 801-208-2212 to arrange for continued storage.

Data Type	Period (shortest period applies)
1. Production transaction data	Archived after two years from SBS's invoice transaction date
2. Archived production transaction data	Stored in an archived state for only one year after archived invoice date and then destroyed
3. Historical Event Log data	Stored for four months from the date of the completed order
4. E-mail correspondence	Destroyed three (3) years after receipt or creation

LICENSE OWNERSHIP TRANSFER. Your License may be transferred or moved to a different site location only by giving SBS advance written notice of such proposed transfer. Notice should be given to SBS at: SPOT Business Systems, 12345 South 300 East, Draper, Utah 84020. In the case of a transfer of a Service License, Your transferee must acquire its own License and provide SBS with its billing information. If such procedure is not conducted, then You remain obligated for the payment of the License fee even though it is being used by Your transferee. This transfer of Licenses is free of charge (transferring data or changing the structure of the existing Service, where it involves programming time, will be charged hourly at SBS's then published rate). SBS has no obligation to train any such successor Licensee on the use of the Software. If You are the successor Licensee, then You are required to have SBS provide, and to pay for, 1-3 days of onsite training.

TAXES. You will pay all sales and use tax generated as a result of paying the License fee whether or not initially collected by SBS. To the extent SBS fails to collect the full amount of such taxes from You, which collection is only made if it is clearly designated as such in any invoicing by SBS, You will indemnify and hold harmless SBS from all such non-collected taxes, as well as all interest and penalty incurred or threatened to be incurred as a result of failure to fully collect and pay such taxes.

DISPUTES. All disputes and disagreements arising out of the License or this Agreement shall be submitted to and settled by arbitration. An arbitrator selected by SBS from the American Arbitration Association list of arbitrators shall be used. The arbitration shall proceed in accordance with the rules and procedures of the American Arbitration Association and shall be held in Salt Lake City, Utah. The decision of the arbitrator shall be final and conclusive on the parties. The decision and award of the arbitrator may be entered in any court of competent jurisdiction, and enforced by due proceedings in such court.

INDEMNIFICATION. You agree and promise to defend, indemnify, save and hold SBS harmless from any and all demands, liabilities, losses, costs and claims, including but not limited to, reasonable attorney's fees, asserted against SBS, its agents or employees, that may arise, result, or be threatened as a result of: (1) payment of Your fee via ACH and (2) Your actions or the actions of Your employees, agents or assigns.

WAIVER. No waiver of any provision of the License or this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

MODIFICATION. No changes, modifications, addendum, supplement or amendment to any provision of this License shall be valid unless executed in writing by SBS. SBS reserves the right to amend this License at any time.

MISCELLANEOUS. The License shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, assigns and legal representatives. The License is made pursuant to and shall be governed by and construed in accordance with the laws of the State of Utah. In the event that any provision of the License conflicts with the law under which the License is to be construed or is held invalid by any court with jurisdiction, such provision shall be deemed to be restated or redacted to reflect as nearly as possible the original intention of the parties in accordance with applicable law, and the remainder of the License shall remain in full force and effect.

ENTIRE AGREEMENT. The Agreement sets forth the entire License and supersedes any prior communications, proposals, representations, understandings, license, or agreements, whether oral or written, between SBS and You with respect to the subject matter of the License.

ADOPTION. This Agreement is automatically adopted by You by using the Software or by the paying of the License fee.

(End of SPOT License Agreement)