

End User Software Licence Agreement

3 July 2017

Notice to user: please read this agreement carefully. By using all or any portion of the software you accept all the terms and conditions of this agreement. If you do not agree, do not use this software.

Exclusions notwithstanding ACL

If you accept these terms in Australia, these terms do not exclude, restrict or modify the application of any provision of the Australian Consumer Law (ACL) (whether applied as a law of the Commonwealth or any State or Territory of Australia), the exercise of any right or remedy conferred by the ACL, or the liability of the Licensor for a failure to comply with any applicable consumer guarantees where to do so would either contravene the ACL or cause any part of the this agreement to be void.

1. Definitions and Interpretation

Computer means an electronic device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.

Licensee means you or your company, unless otherwise indicated.

Licensor means Neotechnology Pty Limited, of suite 7.03, 227 Elizabeth Street Sydney 2000 Australia.

Permitted Number means one (1) unless otherwise indicated under a valid licence (e.g. a volume licence) granted by the Licensor.

Software means the computer information and applications which are the subject of this licence, including digital images, stock photographs, clip art, sounds or other artistic works ("stock files"); related explanatory written materials or files ("documentation"); and fonts.

Updates means upgrades, modified versions, updates, additions, and copies of the software, if any, licensed to you by the Licensor.

Use or Using means to access, install, download, copy or otherwise benefit from the functionality of the software by use in accordance with the documentation.

You or you means the Licensee or any business of the Licensee.

Words importing the singular include the plural and vice versa and words importing one gender shall include the other gender.

Headings are for ease of reference only and shall not affect the interpretation of this agreement.

A reference to any statute includes any statutory modification or re-enactment of it and all regulations, rules and ordinances issued under it.

2. Software Licence

The Licensor grants to the Licensee a non-exclusive, non-transferable licence to use the software for the purposes described in the documentation, strictly in accordance with the provisions of this Licence. Some third party materials included in the software may be subject to other terms and conditions, which are typically found in a "read me" file located near such materials.

2.1 Software Licence Fee

The Licensee is not entitled to use the program until the Licence fee has been paid

2.2 General Use

You may install and use a copy of the software on your compatible computer, up to the permitted number of computers.

2.3 Server Use (Amicus and SprintPOS only)

You may install one copy of the software on your server computer for the purpose of downloading and installing the software onto other computers within your internal network up to the Permitted Number or you may install one copy of the software on a computer file server within your internal network for the sole and exclusive purpose of using the software through commands, data or instructions (e.g. scripts) from an unlimited number of computers on your internal network. No other network use is permitted, including but not limited to, using the software either directly or through commands, data or instructions from or to a computer not part of your internal network, for internet or web hosting services or by any user not licensed to use this copy of the software through a valid licence from the Licensor.

2.4 Stock Files

Unless stated otherwise in the “read-me” files associated with the stock files, which may include specific rights and restrictions with respect to such materials, you may display, modify, reproduce and distribute any of the stock files included with the software. However, you may not distribute the stock files on a stand-alone basis, i.e., in circumstances in which the stock files constitute the primary value of the product being distributed. Stock files may not be used in the production of libellous, defamatory, fraudulent, lewd, obscene or pornographic material or any material that infringes upon any third party intellectual property rights or in any otherwise illegal manner. You may not claim any trademark rights in the stock files or derivative works thereof.

2.5 Limitations

To the extent that the software includes Neotechnology Pty Limited Amicus software and Neotechnology Pty Limited SprintPOS software and Neotechnology Pty Limited POSable software (i) you may not alter or modify the installer program or create a new installer for any of such software, (ii) such software is licensed and distributed by the Licensor, and (iii) you are not authorised to use any plug-in or enhancement that permits you to save modifications to a database file with such software.

2.6 No interference with the software

You agree not to reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the software.

2.7 Availability of the service

1. You are responsible for obtaining and maintaining internet access to allow you to use the software, including obtaining and maintaining appropriate browser software.
2. The software may be disrupted due to systems failure of technology used by the Licensor or a third party involved in providing the service.
3. The software may also be unavailable for short periods due to necessary or desirable system maintenance or upgrades. The Licensor will use its best endeavours to inform you beforehand if system maintenance or upgrades is required.
4. Subject to the ACL, the Licensor is not responsible or liable to you or your business for any loss or claim arising from the software or any part of it being delayed, disrupted or unavailable.

2.8 Protection of username and password

You must protect your username and password and agree to accept liability if your login details are used by an unauthorised person.

2.9 Customer Data

You understand and agree that the Licensor has no control over the content of the data produced by you. You are responsible for taking your own steps to maintain the appropriate security, protection and backup of your data and software. You understand that Neotechnology is not responsible for any loss or corruption of your data or other software.

3. Intellectual Property Rights

The software is the intellectual property of the Licensor. The structure, organisation and code of the software are the valuable trade secrets, intellectual property and confidential information of the Licensor. The software is protected by copyright, including without limitation by Australian copyright law, international treaty provisions and applicable laws in the country in which it is being used. You may not copy the software, except as set forth in section 2 (“**software licence**”). Any copies that you are permitted to make pursuant to this agreement must contain the same copyright and other proprietary notices that appear on or in the software.

4. Assignment

You may not assign or otherwise transfer the benefit of this licence without the prior written consent of the Licensor. You may assign your licence to a third party but only if the business name is retained exactly, provided you have first obtained the prior written consent of the Licensor.

You may not, rent, lease, sublicense or authorise all or any portion of the software to be copied onto another user’s computer except as may be expressly permitted herein. You may, however, transfer all your rights to use the software to another person or legal entity provided that: (a) you also transfer this agreement, the software and all other software or hardware bundled or pre-installed with the software, including all copies, updates and prior versions, and all copies of font software converted into other formats, to such person or entity; (b) you retain no copies, including backups and copies stored on a computer; and (c) the receiving party accepts in writing the terms and conditions of this agreement and any other terms and conditions upon which you legally purchased a licence to the software. Notwithstanding the foregoing, you may not transfer education, pre-release, or not for resale copies of the software.

5. No Warranty

The software is being delivered to you “as is” and the Licensor makes no warranty as to its use or performance. The Licensor and its suppliers do not and cannot warrant the performance or results you may obtain by using the software. Except for any warranty, condition, representation or term to the extent to which the same cannot or may not be excluded or limited by law applicable to you in your jurisdiction, the Licensor and its suppliers make no warranties conditions, representations, or terms (express or implied whether by statute, common law, custom, usage or otherwise) as to any matter including without limitation non infringement of third party rights, merchantability, integration, satisfactory quality, or fitness for any particular purpose.

8. Limitation of Liability

In no event will the Licensor or its suppliers be liable to you for any damages, claims or costs whatsoever or any consequential, indirect, incidental damages, or any lost profits or lost savings (“Loss or Claim”), even if a Licensor representative has been advised of the possibility of such Loss or Claim or for any Loss or Claim by any third party. The foregoing limitations and exclusions apply to the extent permitted by applicable law in your jurisdiction.

The Licensor's aggregate liability and that of its suppliers under or in connection with this agreement shall be limited to the amount paid for the software, if any. Nothing contained in this agreement limits the Licensor's liability to you in the event of death or personal injury resulting from the Licensor's negligence or for the tort of deceit (fraud). The Licensor is acting on behalf of its suppliers for the purpose of disclaiming, excluding and/or limiting obligations, warranties and liability as provided in this agreement, but in no other respects and for no other purpose. For further information, please see the jurisdiction specific information at the end of this agreement, if any, or contact the Licensor's customer support department.

9. Governing Law

This agreement shall be governed by and interpreted in accordance with the laws of the New South Wales, Australia.

10. General Provisions

Should any part of this agreement be or become invalid or unenforceable, that part shall be severed from this agreement. Such invalidity shall not affect the validity of the remaining provisions of the agreement.

This agreement shall not prejudice the statutory rights of any party dealing as a consumer.

This agreement may only be modified by a writing signed by an authorised officer of the Licensor. Updates may be licensed to you by the Licensor with additional or different terms. This is the entire agreement between the Licensor and you relating to the software and it supersedes any prior representations, discussions, undertakings, communications or advertising relating to the software.

11. Notice to U.S. Government End Users

The software and documentation are "commercial items", as that term is defined at 48 c.f.r. §2.101, consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 c.f.r. §12.212 or 48 c.f.r. §227.7202, as applicable. Consistent with 48 c.f.r. §12.212 or 48 c.f.r. §§227.7202-1 through 227.7202-4, as applicable, the commercial computer software and commercial computer software documentation are being licensed to U.S. government end users (a) only as commercial items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States. For U.S. government end users, the Licensor agrees to comply with all applicable equal opportunity laws including, if appropriate, the provisions of executive order 11246, as amended, section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 usc 4212), and section 503 of the Rehabilitation Act of 1973, as amended, and the Regulations at 41 c.f.r. parts 60-1 through 60-60, 60-250, and 60-741. The affirmative action clause and regulations contained in the preceding sentence shall be incorporated by reference in this agreement

12. Compliance with Licences

If you are a business or organisation, you agree that upon request from the Licensor or the Licensor's authorised representative, you will within thirty (30) days fully document and certify that use of any and the Licensor's software at the time of the request is in conformity with your valid licences from the Licensor.

If you have any questions regarding this agreement or if you wish to request any information from the Licensor please use the address and contact information included with this product to contact the Licensor office serving your jurisdiction.

Neotechnology Pty Limited, Amicus, and SprintPOS are either registered trademarks or trademarks of the Licensor in the United States and/or other countries.

13. Support

(Amicus and SprintPOS only) Where a support agreement is in place either included or purchased separately, the end user is responsible for providing an Internet connection for the purpose of remote log in by Licensor technicians to access the system should it be required.

(POSable) When available the licensee is responsible for providing the Licensor with an error log file

14. Privacy

The Licensor uses and protects your information, including information transmitted via the software, in accordance with the Neotechnology Privacy Policy, located at: <http://neotechnology.com.au/privacy-policy/> and hereby incorporated by reference.

15. Application specific terms

POSable

POSable is a cloud based point of sale system covering point of sale uses, e-commerce, loyalty programs, inventory management, payment gateway, reporting systems and other uses.

Availability of POSable

You are responsible for obtaining and maintaining internet access to allow you to use POSable. This includes but is not limited to internet or browser software versions that are compatible with POSable. The Licensor is not responsible for notifying you of any upgrades, fixes or enhancements to any such software, or for any Loss or Claim arising from a compromise of data transmitted using networks or facilities which are not owned or operated by the Licensor.

POSable could be disrupted if systems failure occurs due to technology used by either the Licensor or third parties involved in providing POSable.

POSable may also be unavailable for short periods because of necessary or desirable system maintenance or upgrades. If this is needed, we will try to inform you beforehand.

The Licensor is not responsible or liable to you or the Business for any loss or claim arising from POSable or any part of it being delayed, disrupted or unavailable.

Limitation of Liability

The Licensor is not responsible or liable to you or your business for:

- a. any Loss or Claim relating to the provision of the system data made available through POSable, including delays, disruptions, inaccuracies or the loss of data;
- b. any Loss or Claim relating to your use of, or reliance upon, the system data provided to you through POSable;
- c. the actions or inaction of third party or other persons (including those which may be negligent or unauthorised) relating to POSable;
- d. any Loss or Claim arising from a failure by us to comply with the Terms for any cause which could not reasonably be controlled or prevented by us; or
- e. any Loss or Claim arising from a failure by you or the Business to maintain archive records of your data.