

micros[®]
SUBWAY[®] MAINTENANCE TERMS & CONDITIONS
Revision: Dec-04

These terms and conditions will be incorporated by reference in and apply to the Service Proposal/Invoice issued by MICROS Systems, Inc. ("MICROS") to a Subway[®] customer ("Customer") for hardware maintenance services and/or telephone support services. The Service Proposal will identify (A) the MICROS hardware products and the software ("Intellectual Property") for which MICROS will be providing maintenance services and support services, (B) the applicable Coverage Periods, and (C) the price for services. The Invoice will reflect the same information. The Service Proposal/Invoice may contain other site-specific information. The Service Proposal/Invoice, read in conjunction with these terms and conditions, forms the maintenance services agreement ("Agreement") between Customer and MICROS.

These terms and conditions are available only to (a) Customers who operate restaurants under the Subway[®] brand name pursuant to a valid and current franchise agreement (or similar arrangement) with Doctor's Associates, Inc. or an affiliate thereof, or (b) sites owned and operated under the Subway[®] brand name by Doctor's Associates, Inc., or an affiliate thereof. **These terms and conditions are only available to Customers and sites located in the United States of America or Canada.**

HARDWARE SERVICES

Note: The terms for services for MICROS-branded products are addressed in sections 1-6. The terms for services for HP-branded and supported products are addressed in section 7 and in the HP Addendum. The terms for service for Samsung branded and supported products are also addressed in section 7 and in the Samsung Addendum. Sections 8-26 do not apply to HP or Samsung branded and supported products (unless expressly so indicated).

1. HARDWARE MAINTENANCE SERVICES [MICROS-branded products].

1.1. Covered Services. Starting on the commencement date specified on the MICROS Service Proposal/Invoice, for Covered Locations located within Zones 1-8, and provided Customer is not in default hereunder or under MICROS sales orders or other MICROS invoices, MICROS Service Representatives will provide Customer with the necessary hardware maintenance services to maintain the equipment listed on such Service Proposals/Invoice ("Covered Products") in good working condition, ordinary wear and tear excepted. The Service Proposal/Invoice, read in conjunction with these terms and conditions, forms the maintenance services agreement ("Agreement") between Customer and MICROS. Basic and Extended on-site maintenance service ordinarily covers the PC Workstation(s), touchscreen monitor(s), mag card reader(s), memory, hard drive(s), LAN card(s), external floppy drive(s), cash drawer(s), customer display(s), modem(s), and keyboard(s). Thermal receipt printers are covered only when Customer elects maintenance service that expressly includes coverage for thermal receipt printers. Report printers and CD-RW drives are not covered by any maintenance options hereunder, and Customer must seek service from the product manufacturer or its agent or authorized repair/service center for such items. In lieu of on-site maintenance (as detailed in sections 1-7) Customer can elect to purchase Depot Service (as more fully described in section 25). As an option in addition to on-site maintenance or Depot Service, Customer can elect to purchase Help Desk Case Pack coverage (which is described more fully in section 8).

1.2. Central Dispatch—Hardware. Hardware maintenance services hereunder include central dispatch services, available through the MICROS help desk. Dispatch of personnel will be subject to the Coverage Period that Customer has purchased. Customer may also receive telephonic support in the form of general technical and operational guidance to aid Customer personnel in performing initial diagnosis and repair of technical and operational difficulties with Covered Products. **OTHER TELEPHONIC SUPPORT (E.G., FOR SOFTWARE, OR FOR GENERAL HARDWARE GUIDANCE, DIAGNOSTICS, OR INFORMATION) IS AVAILABLE ONLY IF THE CUSTOMER HAS EITHER (A) PURCHASED CASE PACKS, WHICH ARE SUBJECT TO THE TELEPHONE SUPPORT TERMS AND CONDITIONS, SPECIFIED IN SECTIONS 8 AND 9, (B) PURCHASED TELEPHONE SUPPORT ON A PER-CALL BASIS, USING A CREDIT CARD FOR PAYMENT, OR (C) ENTERED INTO A SEPARATE TELEPHONE SUPPORT OR CREDIT CARD BILLING AGREEMENT WITH MICROS.**

MICROS Systems, Inc.

2. PARTS AND SUPPLIES. MICROS Service Representatives will furnish tools, test equipment, and parts necessary for the maintenance of the Covered Products; provided, however, that the following parts and supplies, namely, ribbons, keytops, paper, logos, batteries, keys to any locks, cash tills and lids, coin trays, magnetic tape, magnetic cards, disks, CD media, toner, keyboard overlays, light bulbs, and any other consumable part or supply, will be supplied at a charge, and Customer may purchase such items at the MICROS Service Representative's then current price. Parts removed as part of a "repair by replacement" process will become the property of MICROS' Service Representatives.

3. OUT OF SCOPE/EMERGENCY SERVICE AND EXCLUDED SERVICES. The Agreement applies only to the products listed in the Service Proposal/Invoice and the selected coverage periods. Upon request of the Customer, MICROS or a MICROS Service Representative will provide on a reasonable efforts basis (A) maintenance services requested by Customer for MICROS products not covered hereunder, and (B) maintenance services that are outside the scope of the Agreement (including, without limitation, services outside of the agreed hours of coverage, service calls resulting from Customer's violation of its obligations under section 6, or labor or parts made necessary by causes described in section 13 as excluded from the coverage of the Agreement) on a reasonable efforts basis. Unless otherwise agreed by MICROS and Customer in writing, MICROS or MICROS Service Representatives will provide such maintenance services at the prevailing rates. MICROS will bill Customer directly for the services using the then-current MICROS Major Account out-of-scope rates. Spare parts and parts for equipment not listed in the Service Proposal/Invoice will be charged to Customer at the then-current out-of-scope rates.

Charges for the development and implementation of program modifications and charges for training are not included in the Agreement. If Customer requests program modifications or training, MICROS will bill Customer for that work separately. No professional services (e.g., design, development, testing, and installation of custom requirements, features, or functionality) are provided hereunder, unless expressly identified in the Service Proposal/Invoice. Customer may purchase such professional services from MICROS upon execution of a separate professional services agreement with MICROS, which shall detail the services to be provided, the amounts that Customer will pay for the provision of the services, and ownership and license rights in any intellectual property developed pursuant to that agreement.

4. STANDARD COVERAGE PERIODS. Each MICROS Service Proposal/Invoice shall specify the hours during which MICROS Service Representatives will supply hardware maintenance services to Customer. Standard MICROS coverage time periods are:

EXTENDED COVERAGE (YEAR 1): 9:00 AM - 10:00 PM MONDAY - SUNDAY, W/ HOLIDAYS
BASIC COVERAGE (YEAR 2+): 9:00 AM - 10:00 PM MONDAY – FRIDAY, W/O HOLIDAYS
EXTENDED COVERAGE (YEAR 2+): 9:00 AM - 10:00 PM MONDAY - SUNDAY, W/ HOLIDAYS

Basic Coverage excludes holidays. Holidays are defined as follows: New Year's Day (January 1st), Martin Luther King's Birthday (the 2nd Monday in January), Presidents Day (the 3rd Monday in February), Memorial Day (Last Monday in May), Independence Day (July 4th), Labor Day (the 1st Monday in September), Thanksgiving Day (4th Thursday in November), Christmas Day (December 25th). Customers or Covered Locations located in Zones 4-8 (as defined below) are **not** eligible to purchase Basic Coverage.

Note: HP provides Basic Coverage for HP PCs and ELO monitors is 9:00 AM to 5:00 PM, MONDAY-FRIDAY W/O HOLIDAYS, next business day.

5. **RESPONSE TIMES.** If a MICROS Service Representative's presence is required to perform maintenance on Covered Products hereunder, such Representatives shall exercise reasonable efforts to arrive at the Covered Location on or within the following Response Time guidelines:

On-Site Response Time Guidelines By Call Priority Levels and Service Zones

	<u>Zone 1 Response (Hours)</u>	<u>Zone 2 Response (Hours)</u>	<u>Zone 3 Response (Hours)</u>	<u>Zone 4-8 Response (Hours)</u>
Priority Level 1:	3	4	6	*
Priority Level 2:	4	6	8	*
Priority Level 3:	8	12	16	*
Priority Level 4:	12	16	24	*
Priority Level 5:	N/A	N/A	N/A	N/A

*MICROS or the MICROS Service Representative (as appropriate) shall respond to calls for service for Customers located in Zones 4-8 regardless of Call Priority Level on a reasonable efforts basis. MICROS or a MICROS Service Representative, as appropriate, may refuse to service Covered Locations located outside Zone 8 without liability hereunder.

NOTE: Response time for HP PCS and ELO monitors is Monday-Friday, 9:00 AM to 5:00 PM, next business day.

Response Time: "Response Time" is defined as the continuous elapsed time from Customer's contact with MICROS Central Dispatch and request for on-site services to the arrival time of the MICROS Service Representative at the Covered Location, excluding all elapsed time taking place outside of the scope of the Agreement. If such Response Time would require arrival after the contracted maintenance period, Customer shall have the option of receiving service on or before the response time guidelines as defined herein on the following contracted day or requesting Emergency or Out-of-Scope Service pursuant to Paragraph 3 herein. If services outside the contracted maintenance period, (but otherwise covered), are required due to the failure of MICROS Service Representative to meet the Response Time Guidelines as specified herein, MICROS Service Representative shall not invoice Customer for such services.

Zones Defined

- Zone 1:** Covered Locations within a 30-mile radius of the MICROS Service Facility.
- Zone 2:** Covered Locations outside Zone 1 and within a 75-mile radius of the MICROS Service Facility.
- Zone 3:** Covered Locations outside Zone 2 and within a 125-mile radius of the MICROS Service Facility.
- Zone 4:** Covered Locations outside Zone 3 and within a 175-mile radius of the MICROS Service Facility.
- Zone 5:** Covered Locations outside Zone 4 and within a 225-mile radius of the MICROS Service Facility.
- Zone 6:** Covered Locations outside Zone 5 and within a 275-mile radius of the MICROS Service Facility.
- Zone 7:** Covered Locations outside Zone 6 and within a 325-mile radius of the MICROS Service Facility.
- Zone 8:** Covered Locations outside Zone 7 and within a 375-mile radius of the MICROS Service Facility.

"MICROS Service Facility" means a MICROS authorized dealer location, a MICROS regional office, or a MICROS regional sub-office. The Service Zone for a Covered Location will be identified in the Service Proposal.

Call Priority Levels Defined:

- Priority Level 1: Covered system completely non-operational.
Examples: Primary and backup servers down on a client/server based system or server down on single-server system, all terminals down, all terminals not communicating to server (server-based systems) or themselves (distributed processing systems).
- Priority Level 2: Partial covered system failure severely affecting Customer operations.
Examples: System operational but cannot complete end-of-day, entire revenue center down, entire remote printer or remote CRT subsystem down, 25% or more of installed terminals down, drive-through terminal down (quick service applications), back office PC down (distributed processing systems or MWS application), interface to PMS or other key system (CA/EDC) not operational.

- Priority Level 3: Partial system failure moderately affecting Customer operations.
Examples: One terminal down, multiple terminals down (but less than 25% of installed terminals), one or more printer down (but not the entire printing subsystem), one or more magnetic card readers down (but less than 25% of installed magnetic card readers).
- Priority Level 4: System operational with minor difficulty.
Examples: Cash drawer sticking, key(s) sticking on keyboard, minor user or customer display problem, minor print problem.
- Priority Level 5: Scheduled services.
Examples: Preventative maintenance, equipment installation, equipment relocation, training, re-training, services deferred to a later time or day.

6. OBLIGATIONS OF CUSTOMER.

6.1 Location of Equipment. Customer understands that the total annual charges listed in the Service Proposal/ Invoice, are for maintenance services performed at the location(s) specified on the MICROS Service Proposal/ Invoice ("Covered Location") and (unless expressly stated on the Service Proposal/Invoice) do not include charges associated with relocation, redesign, reinstallation, or Customer-desired reconfiguration of Covered Products, or any training charges.

6.2. Alterations. Customer will not make any alterations or attachments to the Covered Products without prior written consent of MICROS or the MICROS Service Representative.

6.3. Environment. Customer will provide environmental, installation, and operational conditions in accordance with MICROS requirements. In particular, the AC power lines for the Covered Products must be dedicated, isolated, and insulated lines that conform to MICROS factory specifications. Customer recognizes that MICROS is not licensed or certified to perform electrical or structural changes at Customer's site, and that Customer is solely responsible for procuring such services.

6.4. Access. Customer will provide full and immediate access to the products for MICROS Service Representatives. If a MICROS Service Representative is required to wait more than 15 minutes for access to Covered Products, then the MICROS Service Representative will bill Customer for such excess waiting time at its prevailing hourly rate.

6.5. Routine Care. Customer will properly render routine attention to the Covered Products. Routine attention shall include, without limitation, the use of paper, ribbons, magnetic cards, and magnetic disc media that meet or exceed MICROS' specifications, periodic cleaning of equipment cabinets with a non-abrasive and non-corrosive cleaner, maintaining at least three inches of unrestricted space around Covered Products to provide for proper air circulation, and keeping all Covered Products free from harmful materials. MICROS shall not be liable for any costs or for performing any services hereunder arising in connection with Customer's negligence, abuse, misuse, or failure to perform routine maintenance and standard operating procedures.

7. HP AND SAMSUNG PRODUCTS. The provisions of sections 1-6 do not apply to support for HP or Samsung branded and supported products. On-site service for HP PCs and ELO monitors shall be provided directly by HP personnel, in accordance with the terms of the HP Addendum, attached and incorporated by reference herein. HP report printers are covered by a 1-year advanced exchange program by calling 1-800-474-6836. Customer will receive a service reference number at the end of the call. Upon determining that a printer is defective, HP will send a replacement printer within 24-48 hours (depending on the day/time of the call) via express mail. The replacement printer box will contain a call tag with which to return the defective printer (using the box in which the replacement was supplied). Samsung printers are covered by a 1-year manufacturer's mail in warranty by calling 1-800-SAMSUNG. Details of the Samsung warranty can be found in the Samsung Addendum, attached and incorporated by reference herein.

SOFTWARE/TELEPHONE SERVICES

8. TELEPHONE SUPPORT. For Subway® Customers, telephone software support is sold in "Case Packs," which permit calls to the MICROS help desk for a specified number of Cases. A "Case," for purposes of this

MICROS Systems, Inc.

Subway® Maintenance Services Terms & Conditions Version 12-04

Page 4 of 14

Agreement, is an identifiable and discrete hardware, software, or network problem with, or question relating to, the use, operation, programming, or set-up of the Covered Products or the Intellectual Property, for which MICROS will open a support case in its customer support system. Each Case reported in a call by a Customer to the help desk for software support debits that Customer's Case Pack balance by one, unless one of the exceptions specified below applies. A single call may encompass one or more Cases and one Case may comprise multiple calls. **Case Packs expire if not completely used within 12 months of the date of purchase, and Customer shall receive neither a refund, nor a credit against other or future purchases, in respect of Cases not used during the 12-month active period. Case Packs are not transferable or assignable.**

8.1 Support Services. Telephone Support shall be provided to the Customer and its employees only. Customer may receive telephone support from MICROS at MICROS's premises from 7:00 A.M. to 11:00 P.M., U.S. Eastern Time Zone, 7 days/week including Holidays. Provided the Customer is not in default under any of its agreements with MICROS, MICROS will provide support ("Support"), consisting exclusively of the following items:

8.1.1. Software. For a Case, MICROS will provide technical and operational guidance to aid Customer employees in the set-up, use, programming, and operation of the Intellectual Property.

8.1.2. Remote Service. For a Case, MICROS will review Software and related files, provided that Customer supplies such Software and files to MICROS via a modem or broadband connection complying with MICROS's specifications. Customer acknowledges that MICROS's ability to provide Support through remote access is dependent upon Customer's compliance with its obligations under this section. Customer agrees that, if communication is disrupted for reasons outside MICROS's reasonable control, including, without limitation, causes described in sections 13 or 20, or failure or interruption of Customer's VPN, that MICROS will use all reasonable efforts to re-commence provision of Support once the communication disruption is resolved, and that Customer waives any claims hereunder against MICROS resulting from MICROS's inability to provide Support under this section 8.1.2 as a result of Customer's non-compliance with its obligations under this section or due to communication disruption for reasons outside MICROS's reasonable control.

8.1.3. Hardware. Customer may use Case Pack calls to address hardware Cases, which could include general technical and operational guidance to aid Customer personnel in performing initial diagnosis and repair of technical and operational difficulties with Covered Products.

8.2. Support of Third Party Items. Each Customer will be obligated to purchase, install, and maintain all necessary or appropriate hardware, operating system(s), third party software (including, without limitation, e-mail, and communications software), and/or appropriate database(s) for use with the Software as recommended by MICROS. All hardware, network and related systems, operating system(s), ongoing support, and upgrades will be the sole responsibility of the Customer. MICROS will only provide support for hardware purchased through MICROS. Notwithstanding the foregoing, support of HP-branded and supported items is addressed in paragraph 7 and the HP Addendum.

8.3. Excluded Services. MICROS shall not provide: (i) any on-site software support; (ii) software code designed to correct known defects in the Customer's software (unless Customer is using MICROS proprietary software and has purchased a software enhancement license for it); or (iii) upgrades, new modules, or new releases for the Customer's software (unless Customer is using MICROS proprietary software and has purchased a software enhancement license for it). The Customer may purchase any of the foregoing ancillary support services pursuant to separate written arrangements with MICROS. No consultation or support shall be provided with respect to software not supplied by MICROS or Doctor's Associates, Inc. (or an affiliate thereof). **CENTRAL DISPATCH SERVICES WILL BE AVAILABLE ONLY IF CUSTOMER HAS PURCHASED HARDWARE MAINTENANCE SERVICES FROM OR THROUGH MICROS, WHICH WILL BE SUBJECT TO THE TERMS AND CONDITIONS IN SECTIONS 1-7.**

8.4. Case Pack Exceptions. MICROS will not debit a Customer's Case Pack total with respect to a support case that is reopened within 2 days of its being closed (i.e., the same problem recurs within 48 hours of the first resolution of the problem). MICROS will not debit a Customer's Case Pack total for calls resulting in on-site hardware maintenance if there is a current on-site Maintenance Services Agreement, or for depot hardware maintenance if the customer has a current Depot Maintenance Services Agreement.

8.5. Non-Case Pack Coverage. A Customer who has not purchased a Case Pack, a Customer who has an expired Case Pack, or a Customer who has used up all of the pre-paid Cases in the Case Packs that it purchased, nevertheless may place calls to the help desk for telephone support, but will be required to pay in advance for each

MICROS Systems, Inc.

Subway® Maintenance Services Terms & Conditions Version 12-04

Page 5 of 14

Case presented in the call with a valid credit card at the time of the call. TELEPHONIC SUPPORT FOR HARDWARE AND CENTRAL DISPATCH SERVICES WILL BE AVAILABLE ONLY IF THE CUSTOMER HAS PURCHASED HARDWARE MAINTENANCE SERVICES FROM MICROS, WHICH WILL BE SUBJECT TO THE TERMS AND CONDITIONS IN SECTIONS 1-7.

9. **RESTRICTIONS.** The Customer acknowledges and agrees that Support of the Intellectual Property is conditioned upon the Customer providing, at its sole cost and expense, all required hardware and third party software in accordance with the specifications published, issued, or otherwise provided or made available to the Customer by MICROS. The Customer waives any claims, without limitation, including warranty claims against MICROS, if the hardware and third-party software used in connection with the Intellectual Property do not meet MICROS's written specifications. The Customer shall not make any alterations to the Intellectual Property without MICROS's prior written consent.

GENERAL TERMS AND CONDITIONS APPLICABLE TO ALL SERVICES

10. **PAYMENT OF CHARGES.** Customer shall make all payments due hereunder by check, ACH, or credit card, and shall provide MICROS with the relevant account information at the time of the initial order. Customer shall provide MICROS with at least 60 days' prior notice of any change in account number, or any election to switch from ACH to credit card payment (or vice versa). If MICROS is unable to debit Customer's designated ACH or credit card account, such event shall be treated as a payment default under section 18.3. Additionally, in case any check is returned for insufficient funds, MICROS shall be entitled to charge Customer a returned check fee of the lesser of \$25.00 or the maximum amount permitted by law. The applicable maintenance charges, as stated on the Service Proposal/Invoice, will be billed by MICROS to Customer on an annual basis in advance. The annual rates included in the Service Proposal/Invoice are exclusive of any taxes payable or collectible by MICROS or MICROS Service Representatives on the provision of goods and services hereunder (excluding taxes on MICROS's net income). If the Service Proposal/Invoice provides for a time-based fee (e.g., hourly or daily rates), the fee shall be based on the time actually spent, in increments of not less than 15 minutes each. Any indications of time contained in offers made by MICROS shall be deemed estimated. Any support and other services rendered by MICROS in addition to those provided for in the Service Proposal/Invoice shall be invoiced separately in accordance with the MICROS price list, as amended from time to time. Any discontinuation of use by the Customer of the Intellectual Property, or any portion thereof, or the Covered Products or any of them, shall not cause any reduction in the applicable fees. Unless Customer specifically instructs MICROS to the contrary, MICROS may assess against Customer's ACH or credit card account any charges incurred hereunder apart from the annual maintenance charge, including, without limitation, charges for emergency or out-of-scope service, non-covered supplies/materials, or professional services, and, for customers who elect Depot Service, charges incurred under section 25 for inspection fees, non-returned units, or repair costs (all as described more fully in that section). If MICROS agrees to provide such services on an invoice basis, the invoice shall be due and payable upon receipt.

11. **WARRANTY.** Subject to all of the provisions herein and in the Service Proposal/Invoice, MICROS warrants that the Covered Products will be maintained in good working condition, ordinary wear and tear excepted and that MICROS will use commercially reasonable efforts to provide support services to Customer in accordance with the terms and conditions herein. Customer's sole right and MICROS's sole obligation under the warranty will be limited to the repair or replacement of any Covered Products and/or the re-performance of services in accordance with the terms hereof. **THIS IS THE ONLY AND SOLE WARRANTY THAT IS OR WILL BE PROVIDED HEREUNDER OR IN CONNECTION HERewith ON THE SERVICES PROVIDED, THE INTELLECTUAL PROPERTY, AND THE COVERED PRODUCTS, INCLUDING BOTH HARDWARE AND SOFTWARE, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE, OR ACCURACY. IN NO EVENT SHALL MICROS AND/OR ANY MICROS SERVICE REPRESENTATIVE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, LOSS OF PROFITS, OR ECONOMIC DAMAGES (INCLUDING THOSE ASSOCIATED WITH IMPROPER, UNDER-CALCULATED OR UNDER-ACCURED TAXES OR GOVERNMENT LEVIES), OR CONSEQUENTIAL DAMAGES RELATED TO THE AGREEMENT OR THE SERVICES, HARDWARE OR SOFTWARE PROVIDED HEREUNDER, EVEN IF THE CUSTOMER IS UNABLE TO USE THE COVERED PRODUCTS. MICROS SHALL NOT BE RESPONSIBLE FOR AND DISCLAIMS ALL LIABILITY ASSOCIATED WITH FAILURE OF THE SOFTWARE TO PROCESS CREDIT CARD TRANSACTIONS. THE CUSTOMER'S RIGHTS TO OBTAIN REPAIR OR REPLACEMENT FOR EQUIPMENT OR PARTS THEREOF OR RE-PERFORMANCE OF SERVICES PURSUANT TO THE FOREGOING WARRANTY SHALL BE THE CUSTOMER'S**

MICROS Systems, Inc.

Subway® Maintenance Services Terms & Conditions Version 12-04

Page 6 of 14

SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY BREACH OR ALLEGED BREACH BY MICROS OR ITS SERVICE REPRESENTATIVES, OR TORT, PRODUCT LIABILITY, OR STATUTORY CLAIM. EXCEPT FOR EXPRESS WARRANTIES STATED IN THE AGREEMENT, IF ANY, THE SOFTWARE (OR SERVICES) PROVIDED HEREUNDER IS PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT WILL BE WITH THE CUSTOMER.

12. END OF LIFE DISCLAIMER. In this section 12, "effective date" means the first day of the initial coverage period under this Agreement. The first day of a renewal period is not an "effective date" of this Agreement solely for purposes of this section 12.

12.1 Hardware. MICROS shall endeavor to support MICROS hardware subject to this Agreement for a period of not less than 5 years after the earlier of (i) the effective date of this Agreement; or (ii) the last day the product or part was production manufactured. Customer acknowledges that third parties manufacture certain parts and components required to maintain and repair the hardware hereunder, including the MICROS proprietary hardware itself. Consequently, MICROS cannot guarantee the availability of any third party parts or components, and therefore is not in breach hereof if MICROS is unable to maintain or repair hardware as a result of the unavailability of any third party parts or components. MICROS disclaims any and all liability arising from its inability to obtain third party parts or components necessary or appropriate in the provision of services hereunder.

12.2 Third Party Software. With respect to any third-party software for which MICROS is providing support, Customer acknowledges and agrees that MICROS's ability to support it is dependent upon the manufacturer or supplier's ongoing development and support; consequently, MICROS shall not be in breach hereof if a manufacturer or supplier of third-party software ceases ongoing development or support for it, thus materially adversely affecting MICROS's ability to provide support.

12.3 MICROS Proprietary Software. MICROS shall endeavor to support MICROS proprietary software subject to this Agreement for a period of not less than 3 years after the earlier of (i) the effective date of this Agreement or (ii) the effective date of MICROS's general announcement that it will cease ongoing development for the product. The foregoing applies only to the then-most current version of the MICROS proprietary software; support for other versions may cease at any time.

13. EXCLUSIONS FROM COVERAGE.

13.1 General. The maintenance services to be provided hereunder do not include labor or parts for repairs made necessary by damage from any cause beyond the control of MICROS, including, but not limited to, damage due to fire, wind, water, storm, riot, vandalism, war, natural disaster, burglary, power line fluctuations outside of specified norms, accident, negligence, or abuse not attributable to MICROS or a MICROS Service Representative. MICROS specifically excludes repair or damage as a result of servicing by personnel other than MICROS or an authorized MICROS Service Representative, repair or damage resulting from the failure of Customer to render routine attention to Covered Products as defined herein, and damage to printer heads or motors resulting from (A) the presence of foreign objects between the printer head and the print surface or (B) any other cause other than normal wear and tear. Any repairs resulting from excluded causes or events will be performed only at Customer's request and only after Customer's approval of estimated costs to repair. The list of exclusions from coverage in this section is not exclusive; there may be other exclusions from coverage contained elsewhere in the Agreement.

13.2 Viruses and Security. It is Customer's responsibility to have and maintain in place virus protection software and security for all of its systems and data, which such security includes firewalls, passwords, physical security, and access control policies. If Customer's systems have persistent connections to the Internet, or transmit credit card or gift card transactions over the Internet, or use MICROS or 3rd party SSL to transmit credit card or gift card transactions, or otherwise have persistent connections to any network where there is potential for unauthorized access, Customer acknowledges that the security and protection of the network and the data and applications on that network, including protections against unauthorized access, is solely and entirely Customer's responsibility. A properly configured firewall is required for each site using a persistent connection to the public Internet or any private network where there is a potential for unauthorized access to the MICROS Network. Customer acknowledges that, to be effective, virus protection software, system passwords, and other security software require periodic and routine updates, which Customer must obtain from its supplier or the manufacturer, as appropriate. MICROS DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT, AFTER THE INITIAL INSTALLATION BY MICROS OF ANY MICROS-PROPRIETARY SOFTWARE, THE SOFTWARE OR CUSTOMER'S DATA WILL REMAIN VIRUS-FREE.

MICROS Systems, Inc.

SUPPORT OR SERVICES HEREUNDER NECESSITATED BY COMPUTER VIRUSES, OR BY ANY FAILURE OR BREACH OF CUSTOMER'S SECURITY FOR ITS SYSTEMS OR DATA, INCLUDING, WITHOUT LIMITATION, DAMAGE CAUSED BY PERSONS LACKING AUTHORIZED ACCESS, ARE NOT COVERED UNDER THIS AGREEMENT, AND WILL BE SUPPLIED ONLY UPON CUSTOMER REQUEST AND ON A REASONABLE EFFORTS BASIS IN ACCORDANCE WITH SECTION 3 (OUT OF SCOPE SERVICES). CUSTOMER WAIVES ANY CLAIMS HEREUNDER AGAINST MICROS TO THE EXTENT ARISING FROM CUSTOMER'S FAILURE TO HAVE OR MAINTAIN CURRENT VIRUS PROTECTION, OR TO THE EXTENT ARISING AS A RESULT OF A FAILURE OR BREACH OF CUSTOMER'S SECURITY FOR ITS SYSTEMS OR DATA, OR AS A RESULT OF ANY UNAUTHORIZED ACCESS TO CUSTOMER'S SYSTEMS, WHICH SUCH UNAUTHORIZED ACCESS CUSTOMER ACKNOWLEDGES CANNOT IN ALL CASES BE PREVENTED EVEN IF REASONABLE STEPS HAVE BEEN TAKEN. IF REQUESTED BY CUSTOMER, MICROS SHALL PROVIDE, ON A REASONABLE EFFORTS AND ON A TIME-AND-MATERIALS BASIS, SUPPORT OR SERVICES TO ADDRESS DAMAGE CAUSED BY, BUT NOT LIMITED TO, ANY OF THE FOLLOWING: CUSTOMER'S FAILURE TO HAVE CURRENT VIRUS PROTECTION; CUSTOMER'S FAILURE TO MAINTAIN VIRUS PROTECTION; DAMAGE ARISING AS A RESULT OF A FAILURE OF CUSTOMER'S SECURITY FOR ITS SYSTEMS OR DATA; DAMAGE ARISING AS A RESULT OF A BREACH OF CUSTOMER'S SECURITY FOR ITS SYSTEMS OR DATA; OR DAMAGE AS A RESULT OF ANY UNAUTHORIZED ACCESS TO CUSTOMER'S SYSTEMS. SUCH SUPPORT AND SERVICES SHALL BE BILLED AT THE PREVAILING STANDARD MICROS RATES.

14. **SUBCONTRACTING.** In entering into the Agreement with MICROS for maintenance services, Customer understands that MICROS intends to designate various MICROS Service Representatives in locations close to the location of particular products to provide maintenance services to Customer in a prompt and economical manner. MICROS Service Proposal/Invoices specify the MICROS Service Representatives that MICROS has initially designated to provide the maintenance services for the listed products. MICROS may change the MICROS Service Representative appointed for any or all products at any time. If MICROS is unable to make satisfactory arrangements with a MICROS Service Representative or other qualified party to perform the maintenance services described hereunder (any such other qualified party shall be considered as a MICROS Service Representative for the purposes of the Agreement), then MICROS will use its own service personnel to perform the maintenance services. All references in the Agreement to service or billing by MICROS Service Representative shall apply to MICROS if MICROS personnel perform such services directly. The services to be performed by any MICROS Service Representative under the Agreement are those of an independent contractor and nothing contained herein shall be deemed to constitute any such MICROS Service Representative an agent, servant or employee of MICROS for any purpose whatsoever; nor shall any such MICROS Service Representative have the right or authority to make any warranties or promises or to incur any obligations on behalf of MICROS. MICROS shall not be liable for the acts or omissions of any MICROS Service Representative. Pursuant to the terms and conditions as set forth herein, the methods, means, and times employed by MICROS in fulfilling its obligations hereunder shall be at the sole discretion of MICROS. MICROS shall endeavor to respond in a reasonable time to meet the obligations set forth in the Agreement. In no event shall MICROS or its servicing representatives be held liable for failure to detect conditions or circumstances requiring repair or replacement of equipment covered by the Agreement.

15. **STATUS OF EQUIPMENT.** If the products have been in operation before coverage by the terms of the Agreement (except in the case of a renewal thereof) or during any period of suspended service, MICROS reserves the right to inspect the products at Customer's expense before commencing (or re-commencing, as appropriate) service. The commencement (or re-commencement) of coverage for these products is contingent upon the products meeting standard performance and maintenance requirements.

16. **LIMITATION OF DAMAGES.** MICROS AND ITS AFFILIATES SHALL NOT BE RESPONSIBLE TO THE CUSTOMER OR ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, BUSINESS INTERRUPTION, OR OTHER INCIDENTAL, PUNITIVE OR ECONOMIC DAMAGES (INCLUDING THOSE ASSOCIATED WITH IMPROPER, UNDER-CALCULATED OR UNDER-ACCRUED TAXES OR GOVERNMENT LEVIES), WHETHER ARISING FROM THE CUSTOMER'S USE (OR INABILITY TO USE) OF THE PRODUCTS, SERVICES PROVIDED IN CONNECTION HEREWITH, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. MICROS SHALL NOT, BY REASON OF THE DISCONTINUATION OR MODIFICATION OF ANY SUPPORT SERVICES OR THE TERMINATION OR NON-RENEWAL OF A MAINTENANCE SERVICES AGREEMENT OR THIS AGREEMENT, BE LIABLE TO THE CUSTOMER FOR COMPENSATION, REIMBURSEMENT OR DAMAGES ON ACCOUNT OF THE LOSS OF PROSPECTIVE PROFITS, OR ON ACCOUNT OF EXPENDITURES, INVESTMENTS OR COMMITMENTS MADE IN CONNECTION WITH THE ESTABLISHMENT, DEVELOPMENT OR MAINTENANCE

MICROS Systems, Inc.

Subway® Maintenance Services Terms & Conditions Version 12-04

Page 8 of 14

OF THE CUSTOMER'S BUSINESS. IN NO EVENT SHALL THE CUSTOMER BE ENTITLED TO RECOVER OR COLLECT ANY DAMAGES IN THE AGGREGATE IN EXCESS OF AN AMOUNT EQUAL TO THE FEES PAID HEREUNDER DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CUSTOMER'S FIRST CLAIM OF ALLEGED DAMAGES.

17. CONFIDENTIALITY. Customer expressly undertakes to retain in confidence all information and know-how received hereunder or that MICROS has identified as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, should in good faith be treated as proprietary and/or confidential, and will make no use of such information and know-how except under the terms and during the existence of the Agreement. Notwithstanding the above, Customer may disclose confidential information as required by governmental or judicial order, provided Customer gives MICROS prompt written notice before such disclosure and complies with any protective order (or equivalent) imposed on such disclosure. This provision shall survive termination of the Agreement.

18. TERM, TERMINATION, AND EFFECT OF BREACH.

18.1. Term. The term of the Agreement is the term stated on the Service Proposal/ Invoice as agreed upon by Customer's signature on the Service Proposal/Invoice, unless a party terminates it in accordance with the provisions of this Article 18. Provided MICROS has received full and complete payment as set forth on the Invoice, coverage of the Agreement for new scheduled products will begin upon the date(s) specified on such Invoice.

18.2. Renewal.

18.2.1 General. Either party may terminate the Agreement effective at the end of the then-current term by giving the other party written notice of non-renewal. Notice of non-renewal from Customer to MICROS shall be given on or before the later to occur of (A) the date that is 15 days after the date of a Service Proposal or (B) the date that is 45 days before the end of the then-current term. Notice of non-renewal from MICROS to Customer must be given at least 45 days before the end of the then-current term. If neither party gives the other party a timely notice of non-renewal, then this Agreement shall continue in force (subject to modifications as described in this subsection) for a successive twelve-month term, subject to each party's rights to terminate the agreement under sections 18.3 and 18.4. If MICROS sends Customer a new Service Proposal/Invoice applicable to a renewal term that includes or incorporates any changes in pricing, terms, or conditions, then the pricing, terms, and conditions stated or incorporated by reference in the new Service Proposal/Invoice shall govern during the renewal term, and shall supersede any contradictory pricing, terms, or conditions stated in the Agreement which were effective during the then-current term. If MICROS does not send the new Service Proposal at least 15 days before the end of the then-current term, then the terms and conditions of the Agreement shall continue in force until the expiration of the 15-day notice period.

18.2.2. Case Pack Renewal. On the earlier of (A) the date that is twelve months after the date of purchase or (B) the date upon which the Customer uses up all of the Cases in a Case Pack purchased, the Case Pack shall renew for the same amount of Cases as previously purchased, unless Customer gives MICROS at least 45 days' prior notice of non-renewal. If Customer does not give timely notice of non-renewal, MICROS shall debit Customer's ACH or credit card account in the amount of the purchase price of the new Case Pack.

18.3. Termination by MICROS for Cause and Other Remedies. MICROS may terminate the Agreement upon: (i) a failure by Customer to pay any invoices (whether under the Agreement or other agreements between the parties) when due, which failure is not cured after notice to Customer and a continued failure to pay such invoices for a period of ten (10) days following such notice; or (ii) any other material breach hereunder, which such breach is not cured after notice to Customer and a continued failure to cure such breach thirty (30) days following such notice. In addition, if Customer fails to pay a charge within 30 days of the invoice date, or if Customer is otherwise in default hereunder, MICROS may suspend service under the Agreement, backbill for service provided, and/or collect late charges at the rate that is the lesser of 1.5% per month or the maximum rate allowable by law. In case of a payment default by Customer, MICROS also may accelerate any payments due from Customer under the Agreement during the term (in which case the entire amount to be paid under the Agreement shall be immediately due and payable). The remedies in this section are not exclusive, and MICROS's election of one does not preclude the exercise of any other remedy available hereunder or at law or in equity.

MICROS Systems, Inc.

Subway® Maintenance Services Terms & Conditions Version 12-04

Page 9 of 14

18.4. By Customer for Cause. Customer may terminate the Agreement upon a material breach by MICROS, which such breach is not cured after written notice to MICROS and a continued failure to cure such breach sixty (60) days following such written notice.

19. NOTIFICATION. All notices from one party to the other that are permitted or required hereunder shall be sent either by U.S. mail, postage prepaid, or express courier service (e.g., UPS, Federal Express). Notices to Customer shall be sent to the Customer's address identified on the Service Proposal/Invoice. Notices to MICROS shall be sent to **MICROS Systems, Inc., Attn: Vice-President, Business Services, 7031 Columbia Gateway Drive, Columbia, Maryland 21046-2289**. Notwithstanding the foregoing, notices from Customer to MICROS alleging breach or default under this Agreement must be sent by certified mail or express courier service, and a copy of the notice shall be sent to the attention of the MICROS Legal Department by the same means at the same street address. Either party from time to time may change the address for sending notices by sending a written notice of the change to the other party in accordance with this section. If sent in compliance with this section, notices shall be deemed received on the fifth business day after sending (if by U.S. mail), or the second business day after sending (if sent by express courier service).

20. FORCE MAJEURE. Neither party shall be responsible to the other or to any third party for any failure, in whole or in part, to perform any of its obligations hereunder to the extent and for the length of time that such failure is due in whole or in part to circumstances beyond the reasonable control of the party failing in such performance, which such circumstances could not be avoided through the exercise of due care. Nothing in this section shall excuse or limit Customer's obligation to pay invoices as and when the same are due.

21. ASSIGNMENT. These Terms and Conditions shall be binding upon and inure to the benefit of MICROS and Customer. MICROS reserves the right to subcontract its maintenance obligations hereunder. Except as provided above, the Agreement is not otherwise assignable without the written consent of the other party, which shall not be unreasonably withheld but which, in the case of assignment by Customer, may be conditioned upon payment by Customer of all past due amounts and the MICROS standard transfer fee.

22. SOLICITATION OF EMPLOYEES. Customer agrees not to make any offer of employment to, nor enter into a consulting relationship with, any current employee of MICROS or any former employee who was employed or retained by MICROS within the immediately preceding 365 days who either (a) provided services to Customer under or in connection with the Agreement or (b) was introduced to Customer as a direct consequence of entry into and performance of the Agreement, without MICROS's written consent. For violation of this section, and in addition to any damages or remedies available at law or in equity (including, without limitation, damages or injunctive or equitable relief for misappropriation of trade secrets, unfair competition, breach of contract, or other cause of action arising from or out of the hiring or recruitment of the MICROS's employees), Customer shall pay to MICROS an amount equal to 50% of the total salary paid to the recruited employee(s) in the 12 months immediately preceding such recruitment

23. LEGAL MATTERS. The Agreement shall be construed in accordance with and be governed by the laws of the State of Maryland, USA, excepting the conflict of law rules of the State of Maryland, USA, as if this contract were made and to be performed entirely within the State of Maryland, USA. The parties consent to the exclusive jurisdiction and venue of the federal courts sitting in the state of Maryland, USA, for all claims or actions arising under or relating in any way to this Agreement or the relationship between the parties, whether sounding in contract, tort, or otherwise, and regardless of whether persons or entities who are not party to this Agreement are parties to such action; provided, however, that for any claims or actions for which the federal courts sitting in the state of Maryland would not have subject matter jurisdiction, the parties shall bring such claims or actions in the state courts of the State of Maryland, and consent to the exclusive jurisdiction and venue of the state courts of Maryland for all such claims or actions whether sounding in contract, tort, or otherwise, and regardless of whether persons or entities who are not party to this Agreement are parties to such action. **MICROS AND CUSTOMER HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN THE PARTIES PURSUANT HERETO; THIS WAIVER EXTENDS TO ALL DISPUTES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, AND OTHER COMMON LAW OR STATUTORY CLAIMS.** The parties agree that, to the maximum extent permitted by law, the Maryland Uniform Computer Information Transactions Act does not apply to the transactions and other matters contained in the Agreement. Any claims for damages under the Agreement shall be subject to the

MICROS Systems, Inc.

Subway® Maintenance Services Terms & Conditions Version 12-04

Page 10 of 14

applicable statutory limitation periods or to a limitation period of one year from the date on which the party asserting the claim had knowledge of the facts underlying such claim, whichever is shorter.

24. **MISCELLANEOUS.** The Service Proposal/Invoice and these Terms and Conditions (and any documents incorporated by express reference) together constitute the entire agreement between Customer and MICROS with respect to the subject matter hereof, and may not be added to or modified except by written agreement between Customer and MICROS. Customer and MICROS acknowledge that the Agreement represents the final understanding between them regarding the maintenance services to be provided for MICROS products listed on the Service Proposal/Invoice and shall merge all prior and contemporaneous communications. The Agreement is the final statement of the rights and responsibilities of each with respect to the subject matter hereof, and Customer has not relied on any statements of MICROS, either oral or written, that are not expressly included in such documents. If an arbitrator or court of competent jurisdiction holds any provision of the Agreement to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect. No waiver of any breach of any provision of the Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions of the Agreement, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. The Customer shall not be entitled to set off or reduce any of its claims against or by claims of MICROS, or to avail itself of a right of retention under civil or commercial law, except where the Customer's right of claims have been confirmed pursuant to a valid court order to which MICROS is subject. Section headings are intended for convenience only and shall not be deemed to supersede or modify any provisions hereof.

DEPOT MAINTENANCE PROGRAM

25. **DEPOT MAINTENANCE PROGRAM.** Customers who purchase Depot Maintenance under a Service Proposal/Invoice may receive the services described in this section 25.

25.1 **Basic Structure.** When Customer contacts the MICROS help desk with respect to hardware maintenance services for a unit of hardware subject to a current Service Proposal/Invoice (a "Covered Unit"), upon the MICROS help desk determining that the Covered Unit is eligible for in-scope hardware maintenance, MICROS will cause to be sent directly to the Customer's site a pre-configured spare unit from a depot inventory. A spare may be new or used, at MICROS's sole discretion.

25.2 **Timing of Spare Shipment.** For requests that MICROS receives before 2:00 p.m., Monday through Friday (excluding Holidays), MICROS will make every effort to ship the spare on the same day the request was made, by next day air. For requests received after 2:00 p.m., Monday through Friday, and for requests made on a Saturday, Sunday, or Holiday, the spare will be shipped on the next business day, by next day air. The shipment of the spare to Customer shall be at MICROS's expense.

25.3. **Return of Covered Unit.** The Customer will return the Covered Unit to MICROS or its designated repair agent/contractor, shipping prepaid, using the packaging from the spare shipment. Customer will be invoiced for and shall pay the full retail price of the spare unit (including shipping and handling, and any applicable sales tax) unless Customer ships the Covered Unit within 30 days of receipt of the spare; as an alternative, MICROS may charge Customer's ACH or credit card account for any charges incurred under this section as provided in section 10. Upon receipt by MICROS or its designated repair agent/contractor of a Covered Unit in accordance with this section, title to the spare shall transfer to Customer, and title to the Covered Unit shall transfer to MICROS. Customer shall use reasonable efforts to pack carefully the Covered Unit into the spare shipment package, to minimize the risk of additional damage in transit.

25.4 **Incorrect Item.** If the unit shipped to MICROS or its designated repair agent/contractor is determined not to be a Covered Unit (e.g., the serial number does not match the unit serial number in MICROS's records), MICROS will notify Customer and, at Customer's choice, either (1) return such unit un-repaired at Customer's expense and charge Customer a flat inspection fee rate of \$75.00 per item, or (2) upon receipt of approval from Customer, repair such unit at MICROS's then-standard time and materials rates. Customer's failure to make such an election within 3 business days of receipt of notice from MICROS shall result in transfer of title to the non-Covered Unit to MICROS. In such case, MICROS may retain, use, or dispose of the non-Covered Unit (or its parts) at its sole discretion. Regardless of Customer's election to proceed in accordance with subsection (1) or subsection (2), and regardless of whether MICROS retains the non-Covered Unit in accordance with this sub-section, Customer shall nevertheless be subject to the provisions of section 25.3 with respect to the 30-day shipment

MICROS Systems, Inc.

requirement for Covered Units. MICROS may charge Customer's ACH or credit card account for any charges incurred under this section as provided in section 10.

HP ADDENDUM



SAMSUNG ADDENDUM

