

## **ORDERTAKE END USER LICENSE AGREEMENT**

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING OR USING THIS SOFTWARE, YOU AGREE TO THE TERMS OF THIS END USER LICENSE AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY OR LEGAL ENTITY TO THESE TERMS.

IF YOU DO NOT AGREE TO THESE TERMS, (i) DO NOT DOWNLOAD, INSTALL, COPY, ACCESS OR USE THIS SOFTWARE; AND (ii) PROMPTLY RETURN THIS SOFTWARE AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED THEM.

### **1) Definitions.**

- a) "Authorized Partner" means any of PTL's distributors, resellers or other business partners that are authorized by PTL in writing to sell Support or the Software license rights granted under this Agreement.
- b) "Cloud Services" means the cloud services that PTL provides to Customer, as specified in one or more Grant Letters. Access to the Cloud Services requires either an active support agreement or an active subscription, as required by the specific offering.
- c) "Documentation" means explanatory materials in printed, electronic or online form accompanying the Software in English and other languages, if available.
- d) "Grant Letter" means an Application License Agreement, or a confirmation notice letter issued by PTL to you, confirming the Software and Support purchased by you, including the applicable product entitlement.
- e) "PTL" means PTL Limited, a company registered and existing under the laws of Malta, having its registered address at Nineteen Twenty Three, Valletta Road, Marsa MRS 3000, bearing registration number C 3545.
- f) "Software" means the Ordertake software program in object code format (i) licensed from PTL and purchased from PTL or its Authorized Partners, or (ii) embedded in or pre-loaded on PTL-branded hardware equipment purchased from PTL or its Authorized Partners, in each case including Upgrades and Updates that you install during the applicable Support period. Software may also include additional features or functionality that can be accessed with either a current subscription or active support contract to certain Cloud Services as required by the specific offering and subject to the Cloud Terms of Service.
- g) "Subsidiary" means any entity controlled by you through greater than fifty per cent (50%) ownership of the voting securities.
- h) "Support" or "Technical Support" means the support services offered by PTL for the support and maintenance of the Software and the PTL-branded hardware equipment.
- i) "Updates" are related to content of the Software, including, without limitation, all policy updates and database updates for the Software, and that are made generally available to PTL's customer base as a part of purchased Support and which are not separately priced or marketed by PTL.
- j) "Upgrade" means any and all improvements in the Software that are made generally available to PTL's customer base as part of purchased Support and which are not separately priced or marketed by PTL.

### **2) License Grant; Proprietary Rights.**

- a) Subject to the terms and conditions of this Agreement, PTL hereby grants to you a non-exclusive, non-transferable right to use the Software (for the purpose of this Agreement, to use the Software includes to download, install, and access the Software) listed in the Grant Letter

solely for your own internal business operations. You are not granted rights to Updates and Upgrades unless you have purchased Support (or a service subscription granting rights to Updates and Upgrades).

b) The Software, including, without limitation, its object code and source code, whether or not provided to you, is strictly confidential to PTL. PTL (or its licensors) owns exclusively and reserves all – and you may not exercise any – right, title, and interest in and to the Software, including, without limitation, all intellectual property rights in and to the Software, except to the extent of the limited Software use license granted to you in this Agreement. This Agreement is not an agreement of sale, and no title, intellectual property rights, or ownership rights to the Software are transferred to you pursuant to this Agreement. You acknowledge and agree that the Software and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the Software, all future Updates and Upgrades, and all other improvements, revisions, corrections, bug-fixes, hot-fixes, patches, modifications, enhancements, releases, signature sets, upgrades, and policy and database updates and other updates in, of, or to the Software, all derivative works based upon any of the foregoing, and all copies of the foregoing are trade secrets and proprietary property of PTL, having great commercial value to PTL.

c) All Cloud Services, and any Software that includes Cloud Services, are subject to the Cloud Terms, available at: <https://azure.microsoft.com/en-us/support/legal/subscription-agreement-nov-2014/>.

### 3) Copy and Use Terms.

a) Product Entitlement: The use of the Software depends on the licenses purchased and is subject to this Agreement's version applicable on the date of your Grant Letter.

b) Term: The license is effective for a limited period of time (the “**Term**”) in the event that such Term is set forth in the Grant Letter, otherwise the license shall be perpetual.

c) Copies: You may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes only.

d) Subsidiaries; Managing Parties: You may permit use of the Software in accordance with the terms of this Agreement by a Subsidiary only for so long as such entity remains your Subsidiary. You also may permit a third party with which you enter into a contract to manage your information technology resources (the “**Managing Party**”), provided that (i) the Managing Party only uses the Software for your internal operations and not for the benefit of another third party or the Managing Party, (ii) the Managing Party agrees to comply with the terms and conditions of this Agreement and (iii) you provide PTL with written notice that a Managing Party will be using the Software on your behalf. You shall be responsible and fully liable for each Subsidiary's and Managing Party's compliance with or breach of the terms of this Agreement.

e) General Restrictions: You may not, and you may not cause or allow any third party to: (i) decompile, disassemble or reverse-engineer the Software; or create or recreate the source code for the Software; (ii) remove, erase, obscure, or tamper with any copyright or any other product identification or proprietary rights notices, seal, or instructional label printed or stamped on, affixed to, or encoded or recorded in or on any Software or Documentation; or fail to preserve all copyright and other proprietary notices in all copies of the Software and Documentation made by you; (iii) lease, lend or use the Software for timesharing or service bureau purposes; sell, market, license, sublicense, distribute, or otherwise grant to any person or entity any right to use the Software except to the extent expressly permitted in this Agreement; or use the Software to provide, alone or in combination with any other product or service, any product or service to any person or entity, whether on a fee basis or otherwise; (iv) modify, adapt, tamper with, translate, or create derivative works of the Software or the Documentation; combine or merge any part of the Software or Documentation with or into any other software or documentation; or refer to or otherwise use the Software as part of any effort to develop software (including, without limitation, any routine, script, code, or program) having any functional attributes, visual expressions, or other features similar to

those of the Software or to compete with PTL; (v) except with PTL's prior written permission, publish any performance or benchmark tests or analysis relating to the Software; or (vi) attempt to do any of the foregoing.

#### **4) Technical Support and Maintenance.**

The PTL Application Support Agreement apply if you have purchased Support. The PTL Application Support Agreement is incorporated by reference. After the support or service subscription period specified in a Grant Letter has expired, you have no further rights to receive any Support including Upgrades, Updates and telephone support. PTL may change the Support offered at any time, effective as of the commencement of any renewal period. You will secure any and all privacy-related rights and permissions from individual persons as may be required by regulation, statute, or other law or your internal policies or guidelines in order to disclose to PTL, in connection with PTL's performance of Support or otherwise under this Agreement, applicable personally identifiable information, data, and material.

#### **5) Limited Warranty and Disclaimer.**

a) Limited Warranty: PTL warrants that, for a period of sixty (60) days from the purchase date (the "**Warranty Period**"), the Software licensed hereunder will perform substantially in accordance with the Documentation (the "**Limited Warranty**").

b) Exclusive Remedy: In case of any breach of the above Limited Warranty, as your exclusive remedy and PTL's entire obligation and liability, PTL will (i) repair or replace the Software or (ii) if such repair or replacement would in PTL's opinion be commercially unreasonable, upon PTL's receipt of your written representation and promise that you have removed all instances of the Software and will not use the Software, refund the price paid by you for the applicable Software.

c) Exclusion of Warranty: THE ABOVE LIMITED WARRANTY WILL NOT APPLY IF: (i) THE SOFTWARE IS NOT USED IN ACCORDANCE WITH THIS AGREEMENT OR THE DOCUMENTATION, (ii) THE SOFTWARE OR ANY PART THEREOF HAS BEEN MODIFIED BY ANY ENTITY OTHER THAN PTL OR (iii) A MALFUNCTION IN THE SOFTWARE HAS BEEN CAUSED BY ANY EQUIPMENT OR SOFTWARE NOT SUPPLIED BY PTL.

d) Disclaimer: EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED "AS IS" AND PTL MAKES NO REPRESENTATIONS OR WARRANTIES, AND PTL DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR SYSTEMS INTEGRATION. WITHOUT LIMITING THE FOREGOING, PTL MAKES NO WARRANTY, REPRESENTATION, OR GUARANTEE AS TO THE SOFTWARE'S USE OR PERFORMANCE AND DOES NOT WARRANT, REPRESENT, OR GUARANTEE THAT THE OPERATION OF THE SOFTWARE WILL BE FAILSAFE, UNINTERRUPTED, OR FREE FROM ERRORS OR DEFECTS.

#### **6) Limitation of Remedies and Damages.**

a) UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, NEGLIGENCE, CONTRACT OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND, LOSS OF GOODWILL, LOSS OF PERSONNEL SALARIES, LOSS OF DATA, LOST PROFITS OR REVENUE, DAMAGES DUE TO WORK STOPPAGE AND/OR COMPUTER FAILURE OR MALFUNCTION, AND/OR COSTS OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES, WHETHER OR NOT

FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES.

b) REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT AND/OR ANY OTHER LEGAL THEORY, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER EXCEED THE AMOUNT OF TOTAL FEES PAID BY YOU FOR THE SOFTWARE DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

c) No provision of this Agreement shall exclude or limit in any way (i) the liability of either party for death or personal injury caused by negligence or (ii) your liability for excess usage of and/or any breach of PTL's intellectual property rights in the Software.

d) THE LIMITATION OF LIABILITY IN THIS SECTION IS BASED ON THE FACT THAT ONLY YOU CAN IMPLEMENT BACK-UP PLANS AND SAFEGUARDS APPROPRIATE TO YOUR NEEDS IN THE EVENT THAT AN ERROR IN THE SOFTWARE CAUSES COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE BUSINESS REASONS, YOU AGREE TO THE LIMITATIONS OF LIABILITY IN THIS SECTION AND ACKNOWLEDGE THAT WITHOUT YOUR AGREEMENT TO THIS PROVISION, THE FEE CHARGED FOR THE SOFTWARE WOULD BE HIGHER.

#### **7) Intellectual Property Indemnity.**

a) Indemnity: PTL will indemnify, and, at its election, defend, you against claims asserted against you in a suit or action if: (i) the claim is for direct patent infringement or direct copyright infringement, or for PTL's trade secret misappropriation and (ii) the claim is (A) asserted against the Software, alone and not in combination with anything or (B) a combination of the Software.

b) Exclusions: Notwithstanding anything else in this Agreement, PTL has no obligation to indemnify or defend you for claims asserted, in whole or in part, against: (i) technology or designs that you gave to PTL; or (ii) modifications or programming to Software that were made by anyone other than PTL.

c) Conditions: As a condition of PTL's obligations under this Section 7, you must provide to PTL: (i) prompt written notice of the claim and your agreement to give PTL sole control over the defense and settlement of the claim; and (ii) your full and timely cooperation.

d) PTL's Consent: PTL will not be responsible for any cost, expense, or compromise that you make or incur without PTL's prior written consent.

e) Remedies: PTL may, at its sole discretion and at its expense: (i) procure for you the right to continue using the Software; (ii) replace the Software with a non-infringing Software; (iii) modify the Software so that it becomes non-infringing; or (iv) upon your return of the Software to PTL, and/or removal of the Software from your systems, refund the residual value of the purchase price paid by you for the infringing Software, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Software to you.

f) Personal Indemnity: The foregoing indemnity is personal to you. You may not transfer it to anyone, including your customers.

g) Exclusive Remedy: This indemnity section states PTL's entire obligation and your exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, made in whole or part against the Software.

#### **8) Termination.**

Without prejudice to your payment obligations, you may terminate your license at any time by uninstalling the Software. PTL may terminate your license in the event that you materially breach the terms of this Agreement and you fail to cure such breach within thirty (30) days of receiving

notice of such breach. Upon such termination, you shall promptly return or destroy all copies of the Software and Documentation.

#### **9) Additional Terms.**

a) Evaluation Software: If the Software has been identified by PTL as “Evaluation Software”, then the provisions of this section apply and shall supersede any other conflicting term of this Agreement. Your royalty-free, non-transferable, limited license to use the Evaluation Software, for evaluation purposes only, is limited to thirty (30) days unless otherwise agreed to in writing by PTL. The Evaluation Software may contain errors or other problems that could cause system or other failures and data loss. Consequently, Evaluation Software is provided to you “AS IS” and PTL disclaims any warranty or liability obligations to you of any kind. Support is not available for Evaluation Software. Any information about the Evaluation Software gathered from its use shall be used solely for evaluation purposes and shall not be provided to any third parties. The restrictions described in Section 3(e) apply. If you fail to destroy the Evaluation Software after the evaluation period has expired, PTL may, at its discretion, invoice you an amount equal to the PTL List Price for the Software and you shall pay such invoice upon receipt. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, PTL’S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED PARTNERS UNDER THIS AGREEMENT RELATED TO EVALUATION SOFTWARE, OR IN CONNECTION WITH EVALUATION SOFTWARE, SHALL BE LIMITED TO THE SUM OF FIFTY (50) EURO IN TOTAL.

b) Beta Software: If the Software that you have received has been identified by PTL as “Beta Software”, then the provisions of Section 9(a) above shall apply accordingly. PTL has no obligation to you to further develop or publicly release the Beta Software. Support is not available for Beta Software. If requested by PTL, you will provide feedback to PTL regarding testing and use of the Beta Software, including error or bug reports. You agree to grant PTL a perpetual, non-exclusive, royalty-free, worldwide license to use, copy, distribute and make derivative works and incorporate the feedback into any PTL product at PTL’s sole discretion. Upon receipt of a later unreleased version of the Beta Software or release by PTL of a publicly released commercial version of the Beta Software, you agree to return or destroy all earlier Beta Software received from PTL.

c) “Free” or “Open-Source” Software: The Software may include components (including, without limitation, programs, applications, tools, utilities, libraries, and other programming code) that are made available from third parties under a free or open source software licensing model (“FOSS Code”). FOSS Code components included with the Software are redistributed by PTL under the terms of the applicable FOSS Code license for such component; your receipt of FOSS Code components from PTL under this Agreement neither enlarges nor curtails your rights or obligations defined by the FOSS Code license applicable to the FOSS Code component. Copies of the FOSS Code licenses for FOSS Code components included with Software are included with or referenced in the Software’s Documentation.

#### **10) Privacy and Collection of Personal or System Information.**

a) The Software, Support or service subscription may employ applications and tools to collect personally identifiable, sensitive or other information about you and users (e.g., including, without limitation, your and users’ name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers’ interactions with other computers (collectively, the “Data”).

b) The collection of this Data may be necessary to provide you and users with the relevant Software, Support or service subscription functionalities as ordered, and/or to enable PTL to improve our Software, Support or service subscription. You may be required to uninstall the Software or disable Support or its service subscription to stop further Data collection that supports these functions.

c) By entering into this Agreement, or using the Software, Support or service subscription, you and users agree to the PTL Privacy Policy available at <http://www.ptl.com.mt/privacy-policy>, and to the collection, processing, copying, backup, storage, transfer and use of this Data by PTL and its service providers as part of the Software, Support or service subscription. PTL will only collect, process, copy, backup, store, transfer and use personally identifiable information in accordance with the PTL Privacy Policy.

#### **11) Audit.**

Upon thirty (30) days' prior notice PTL may request, and you must provide, a Software-facilitated system-generated report (the "**System Report**") verifying your Software deployment. You acknowledge that the System Report is based on technological features of the Software that provide Software deployment verification. If the Software does not contain technological features that provide Software deployment verification, you will prepare and provide to PTL within the thirty (30)-day period an accurate Software deployment verification report for the Software. PTL will only request the System Report (or your prepared Software deployment verification report) one time per year and will not unreasonably interfere with the conduct of your business. However, if a System Report or your prepared Software deployment verification report identifies that you are out of compliance with the license terms of this Agreement, you will be required to purchase the additional licenses and pay any reinstatement fees associated with the licenses and/or support and an out-of-compliance fee may also be assessed.

#### **12) Export Controls.**

You acknowledge that the Software is subject to European Union export regulations. You shall comply with applicable export and import laws and regulations for the jurisdiction in which the Software will be imported and/or exported. You shall not export the Software to any individual, entity or country prohibited by applicable law or regulation. You are responsible, at your own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Software. If PTL receives notice that you are or you become identified as a sanctioned or restricted party under applicable law, then PTL will not be obligated to perform any of its obligations under this license if such performance would result in violation of the sanctions or restrictions.

#### **13) Governing Law.**

All disputes arising out of or relating to this Agreement or its subject matter will be governed by the substantive laws of Malta, without giving effect to its rules relating to conflict of laws. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The courts in Malta shall have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter.

#### **14) Confidentiality.**

Each party hereto acknowledges that by reason of its relationship with the other party hereunder, it may have access to confidential information and materials concerning the other party's business, technology, and/or products that is confidential to the other party (the "**Confidential Information**"). Each party's Confidential Information is of substantial value to the party, which value could be impaired if such information was disclosed to third parties or used in violation of this Agreement. Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within fifteen (15) days after disclosure. Each party agrees that it will not use in any way for its own account or the account of any third

party, such Confidential Information, except as authorized under this Agreement, and will protect Confidential Information at least to the same extent as it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information. Neither party may use the other party's Confidential Information except to perform its duties or exercise its rights under this Agreement. The Confidential Information restrictions will not apply to Confidential Information that is (i) already known to the receiving party at the time of access hereunder, (ii) becomes publicly available through no wrongful act of the receiving party, (iii) independently developed by the receiving party without benefit of the disclosing party's Confidential Information, (iv) has been rightfully received from a third party not under obligation of confidentiality or (v) is required to be disclosed by law, provided the party compelled to disclose the Confidential Information provides the party owning the Confidential Information with prior written notice of disclosure adequate for the owning party to take reasonable action to prevent such disclosure, where reasonably possible. Unless otherwise agreed to by both parties, upon termination of this Agreement, each party will return the other party's Confidential Information.

#### **15) Miscellaneous.**

- a) Except for actions for non-payment or breach of PTL's proprietary rights in the Software and Documentation, no action, regardless of form, arising out of this Agreement may be brought by either party more than two (2) years after a party knew or should have known of the claim.
- b) Any terms of this Agreement which by their nature should survive the termination of this Agreement shall survive such termination.
- c) PTL may assign this Agreement, in whole or in part, at any time subject to your prior written consent; provided, however, any assignment resulting from or as part of a merger, consolidation, acquisition of all or substantially all of the assets of PTL, or internal restructuring or reorganization does not require your consent.
- d) This Agreement, including all documents incorporated by reference, represents the entire agreement between the parties and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. If you issue an order to an Authorized Partner or to PTL and the terms and conditions of the order conflict with the terms and conditions of (i) this Agreement or (ii) the Grant Letter, then the terms and conditions specified in this Agreement and in the Grant Letter shall control. No terms or conditions of any pre-printed or boilerplate purchase order of yours or other document of yours will govern the transactions contemplated by this Agreement. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of PTL. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by PTL. If any provision of this Agreement is held invalid, unenforceable, invalid, or prohibited under law, then such provision will be deemed restated to reflect the original intention of the parties as nearly as possible in accordance with applicable law and the remainder of this Agreement shall continue in full force and effect.
- e) All notices, requests, demands and determinations for PTL under this Agreement (other than routine operational communications) shall be sent to the address mentioned in Section 1(e) of this Agreement.