

Terms and Conditions of the Service provided by OMAK Technologies

This page contains the terms and conditions which apply to all Software supplied directly or indirectly by OMAK Technologies (Private) Limited (“OMAK”) or its licensed suppliers.

Definitions

For the purpose of this Agreement the words and expressions set out below shall have the meaning indicated:-

“Acceptance” means the completion or deemed completion of the SoftwareSolution instalation.

“Contract” means this Agreement, License Agreement and any other contract, statement of work, plan, drawings or any other document agreed and signed by OMAK and shared with the Client.

“Client” shall mean and include the party receiving the goods or services supplied by OMAK. As defined in the Agreement.

“Confidential Information” means technical information, specifications, designs, intellectual property rights, know-how, and other information including but not limited to marketing information, customer information, as may be disclosed during the course of this Agreement and marked or verbally indicated as “Confidential” in connection with this Agreement and the Software.

“Effective Date” means the date of execution of the Agreement.

“Licensee/Client” shall mean the individual, legal entity or partnership authorized by the End User Agreement to use the Software.

“License Agreement” means the contract setting out the specific rights of the Licensee.

“Hardware” means the computer system and any hardware component of the Client, on which the Software will be uploaded for use and be made to operate.

“Intellectual Property” means patent rights, copyright rights (including without limitation, rights in audio-visual work and moral rights), design rights, trade secrets, including but not limited to

source code and database rights or any other intellectual property rights of OMAK, recognized and subsisting under the laws of such jurisdiction in which the above rights may be protected.

“License” means a non-exclusive, non-transferable, multi-user license to only use the software, for the Purpose defined in the Agreement.

“Location(s)” means OMAK’s or Clients’s respective offices/stores as specified in this Agreement or such other location as may be notified by the Client.

“Purpose” shall mean for OMAK to supply and maintain the Software.

“Software” means all components of software developed by OMAK for the Software Solution, either cumulatively or individually.

“Software Solution” means the application proposed by OMAK to the Client in line with its requirements

“Services” means Software maintenance provided by OMAK to the Client.

“Terms and Conditions” means this general terms and conditions Agreement related to the Software, provided by OMAK.

“Third Party Software” all software not developed under the terms of this Agreement whether by OMAK or otherwise, but used by Client.

1. TERMS AND CONDITIONS

1.1. Acceptance of the Agreement

1.1.1. The Client agrees to the terms and conditions outlined herein below.

1.1.2. The Client further agrees that the use of the Software and the Software Solution is also governed by the terms of the License Agreement that accompanies or is included with such Software. Such terms are incorporated herein by reference. The terms and conditions set forth herein together with the License Agreement relating to the Software and the Software Solution provided to the Client shall collectively be referred to as the “Agreement”.

1.2. Setup and Modifications

- 1.2.1. Initial remote Menu upload shall be carried out by OMAK and provided free of charge. Subsequent changes to the menu will be billed at an hourly rate mutually agreed to by the Parties.
- 1.2.2. Any new development will be reviewed by OMAK and estimated at a man day rate applicable at the time and made known to the Client prior to commencement of the development.
- 1.2.3. Any modifications and/or customisations required by the Client outside the agreed scope shall be deemed a variation and shall be provided at a price to be mutually agreed to by the Parties prior to commencement of the modifications and/or customisations.
- 1.2.4. Should any deployment demand or require customizations modifications and adaptations to suit Third Party Software this shall require additional charges payable to OMAK and shall be calculated on the man-day charge rate applicable at the date.
- 1.2.5. Provision of Services does not imply any guarantee or representation that OMAK will be able to assist the Client in achieving any results, which are technically not feasible. Subject to this condition, any services which are outside the scope of this Agreement, will, at the request of the Client and at OMAK's option, be provided at the man-day charge rate applicable at the date of commencement of work.
- 1.2.6. If and when requested by the Client, on-site engineer support will be provided at a daily rate applicable at the date of provision.

1.3. Training

OMAK shall provide training on the functions of the Software Solution to the Client's nominated staff in the following manner:

- 1.3.1. Training shall be conducted in groups. OMAK recommends small groups for most effective learning. However the Client may decide on the size of the classes based on practical limitations. Ideally a session would be for a group comprising a maximum of 10 to 15 employees at a time.

- 1.3.2. OMAK would provide the initial training as per the Standard Training Schedule mentioned below as part of the setup fee. The date and time should be mutually agreed upon at least three (3) days prior to the session. Any changes to the agreed training session should be informed to OMAK at least three (3) days prior to scheduled date. The training will be at the Client's locations.
- 1.3.3. The Client is encouraged to record the training on video, audio, written documents at the time of session. The recordings shall only be used for internal training purposes unless the prior written approval of OMAK is obtained.
- 1.3.4. Additional free training sessions may be conducted at OMAK premises on pre-scheduled dates, subject to OMAK's agreement to the same at such time. The Client could obtain the relevant details from OMAK from time to time.
- 1.3.5. Any additional training outside the free Standard Training schedule below will be charged at an hourly rate applicable at the date of training.

Training Description	Duration
POS(Front end)	3 Hours X 2 Day
Inventory (Backend)	3 Hours X 2 Day
Mobile Ordering	2 Hour X 1 Day
Online Ordering	2 Hours X 1 Day
Reztguru	3 Hours X 1 Day

Table 1: Standard Training Schedule

1.4. Support and Services

- 1.4.1. Services support shall be offered to the Client, provided there is no outstanding subscription fee. Diagnosis and provision of a solution for the operational problems will generally be carried out remotely from the site as per the service level agreement(SLA) .
- 1.4.2. Severity levels - Issues are categorized and handled according to an assigned severity level. The assigned severity level for a problem may be mutually re-determined by both parties during the problem resolution process, but OMAK's support team shall have the final authority to determine the e actual categorisation.
- 1.4.3. Target initial response times - All target initial response times are limited to business hours Sunday to Saturday, 8:00am to 11:00pm (GMT+5.30). With the exception of P1 or Critical impacting incidents, these are supported and responded to 24x7x365.
- 1.4.4. Cooperation - OMAK's support team must be able to reproduce errors in order to resolve them. The customer is expected to cooperate and work closely with OMAK to reproduce errors, including conducting diagnostic or troubleshooting activities as requested and appropriate. Also, subject to the customer's approval on a support ticket, users may be asked to provide remote access to their OMAK Software and/or desktop system for troubleshooting purposes.
- 1.4.5. Telephone support to the Client on the routine use and operation of Software shall be provided to a person identified by the Client. If it becomes necessary to carry out Services at the site, such work will be chargeable to the Client at an hourly rate, determined and pre-agreed at the time, and payable at the time of invoicing of such charges inclusive of the monthly rental invoice.
- 1.4.6. OMAK will undertake the responsibility for servicing of the Software on a designated hardware system only if the Client undertakes to upgrade, accept push-notifications and conform to the minimum system requirements advised by OMAK from time to time.

1.4.7. The Services do not include service in respect of defects or errors resulting from any modifications or enhancements or mergers or plug-ins to the Software Solutions/Software not made by OMAK and or made without prior written consent of OMAK, or resulting from incorrect use of the Software Solution.

1.4.8. OMAK is not obliged to support the Software Solution if problems are due to incorrect use or for any other reason external to the Software Solution including but not limited to failure or fluctuation of electricity supplies, hardware failures, accidents, or natural disasters.

Incident priority Level	Priority Description	Response Time	Work-Around, Temporary Fix	Permanent resolution Time
P1-Critical	As it relates to the OMAK's Software Solution, the Client is experiencing a severe problem resulting in an inability to perform a critical business function. There is no workaround.	Software: 15 Mins Hardware: Client's IT Team	Software: 1 Hour Hardware: Client's IT Team	Software: Resolved/Assigned in less than 4 Hours
P2-Major Incident	As it relates to the OMAK's Software Solution, the Client is able to perform job functions but performance is degraded or severely limited.	Software: 30 Mins Hardware: Client's IT Team	Software: 4 Hours Hardware: Client's IT Team	Software: Resolved within 48 Hours of assignment
P3-Medium Incident	As it relates to the OMAK's Software Solution, the Client's ability to perform job functions is largely unaffected, but noncritical functions or procedures are unusable or hard to use. A workaround is available.	Software: 2 Days Hardware:	Software: 1 Week Hardware:	Software: Resolved within 2 weeks

		Client's IT Team	Client's IT Team	
P4-Low Incident	As it relates to the OMAK's Software Solution, the Client is experiencing minimal system impact.	Software: 2 Weeks Hardware: Client's IT Team	Software: 4 Weeks Hardware: Client's IT Team	Software: Resolved within 3 months
P5-Enhancement	Include feature requests and other non-critical questions.	Software: 2 Days for approval Hardware: Client's IT Team	Time Scale will be Discussed and agreed with Client	Software: Resolved within 3 months of approval

Table 2: Severity Level

Action	Activity	Responsibility	Activity output
	Level 1 : Client to report issues to the OMAK helpdesk on email: support@omak.co or alternatively call on +94 703 633233 with the issue type as defined in the SLA guidelines.	Client/Authorized Re-seller	Email / Call Helpdesk
	On receipt of the email, the OMAK support team will acknowledge with an email reply. OMAK support team will clarify and mutually agree on the issue type definition. The SLA will apply from the time of email receipt.	OMAK	Email Update Issue Log to the Client/Authorized Re-seller
	Resolution of issue	OMAK	Email
	Confirmation of the issue being resolved	Client/Authorized Re-Seller	Email
	Issue log close	OMAK	Email

Table 3: Standard Escallation Process

1.5. Disclaimer of Services

It is hereby agreed that the following disclaimers of Services shall apply to the Software Solution delivered under this Agreement.

1.5.1. Provision of the Services does not imply any guarantee that OMAK will be successful in correcting problems that are technically not feasible and OMAK does not accept liability in this connection.

1.5.2. OMAK reserves the right to refuse to provide Services at any time without refunding any sums paid by the Client;

- a. If any attempt is made, other than by OMAK, to remove any defects or deal with any errors in the Software or
- b. If any development or enhancement or variation of the Software is carried out by a party other than OMAK, or
- c. If the Client has failed to pay an invoice dispatched by OMAK in accordance with the provisions of the Agreement, or
- d. Where, in the reasonable opinion of OMAK, the Client's hardware system has ceased to be capable of running the Software successfully for any reason, or
- e. Where modifications are made to the Client's hardware system without prior agreement of OMAK, or
- f. Where, in the reasonable opinion of OMAK, the hardware system requires tuning in order to facilitate the proper functioning and performance of the Software and the Client has failed to make changes to accommodate the requirement requested in writing by OMAK.;
- g. Where the Client fails to purchase the hardware recommended by OMAK.

1.6. The Client would remain obliged to permit, and/or to cause to perform, the removal or un-installation of the Software Solution, from the Client's hardware and software systems, and the Client shall return the Software, to OMAK. Provided that at the time of such action, the Parties must assist each other in recovering data the Client deems is essential for its own audit, accounting, regulatory purposes, and for OMAK to successfully remove or un-install the Software.

1.7. Collaboration

- a. Any use by the Client of the Software in collaboration with any other application, unauthorized Hardware or device that has not been recommended by OMAK shall be with the prior consultation and approval of OMAK.
- b. In the event the Client requires the use of any Third Party Software or Hardware in conjunction with the Software delivered by OMAK, the Client shall obtain original licenses in respect of the Third Party Software or Hardware, at its own cost.
- c. Any use of Third Party Software or Hardware in collaboration with the Software shall be pre-approved by OMAK.

1.8. Payment

All invoices shall be payable in accordance with the terms stipulated in the License Agreement applicable to the Client.

1.9. Limitation of Liability

- a. In no event shall OMAK be liable to the Client for any damages whether direct, incidental, consequential or indirect whether in lost profits, lost data, stolen or misappropriated data, expenses, lost savings or costs arising out of the use or inability to use the Software for any purpose outside the approved use or through the use of any Hardware or software not approved by OMAK.
- b. OMAK shall not be liable for any defects in hardware and/or software owned by the Client.

OMAK is not liable to support the Software if the Client fails to use the version of the operating system/software specified by OMAK from time to time, or if the Client fails to maintain Software at the release level specified by OMAK.

1.10. Confidential Information

Each Party shall protect the other's Confidential Information from dissemination and use the greater of industry standard precautions or degree of care that such party uses to protect its own like information. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement and will only disseminate such Confidential Information on written authority of the other party first had and obtained, and only to such employees who are bound by confidentiality obligations that are the same or similar to those set out in this Agreement. Except as expressly provided in this Agreement, no ownership or license rights are granted in respect of any Confidential Information, provided always that no liability shall pass to OMAK should the breach of Confidential Information belonging to the Client, be caused by a third party.

OMAK Intellectual Property

Client agrees not to reproduce, reverse engineer, duplicate, copy, sell, resell or exploit any portion of OMAK's Intellectual Property.

OMAK's Intellectual Property shall mean and include all Intellectual Property defined herein, the Software and Software Solution provided to the Client.

1.11. Termination

Termination of the Agreement shall be in accordance with the provisions in the License Agreement relating to the Software and the Software Solution provided to the Client.

1.11.1. In the event of a breach of Contract the non breaching party shall provide the breaching party immediate written notice and in the event the breaching party fails to rectify the breach within fifteen (15) days of notice the non-breaching party may terminate this Contract on the provision of fifteen (15) days written notice to the breaching party.

1.11.2. In the event of a breach of Confidentiality or Intellectual Property rights the non breaching party may terminate the Agreement immediately.

1.11.3. In the event of termination the obligations of Confidentiality and Intellectual Property Rights set out in this Agreement shall continue and the Client shall remain obligated to pay all outstanding license fees and services fees, which shall fall due in total at the time of termination.

1.12. Non-solicitation

The Client shall not employ any staff member of OMAK before the lapse of 03 years from the date of that employee leaving OMAK.

1.13. Indemnity

The Client agrees to indemnify, defend and hold OMAK and its partners, attorneys, staff and affiliates (collectively, "Affiliated Parties") harmless from any liability, loss, claim and expense, including reasonable attorney's fees, related to the Client's violation of this Agreement or use of the Software.

1.14. Disputes

Any dispute will be made known to OMAK within two (02) years of occurrence, but no later than two (02) years after the date of termination, of the Agreement.

The matter shall be made known in writing and the parties shall work to resolve the matter amicably. In the event the Parties are unable to resolve the matter in an amicable manner the dispute shall be subject to the exclusive jurisdiction of the courts of Sri Lanka.

1.15. Governing Law

The terms and conditions set out herein shall be governed by the laws of Sri Lanka.

1.16. Amendment - .

This Agreement may be amended at any time by OMAK. The latest Agreement shall be uploaded and available for review on the OMAK website

1.17. Force Majeure

No Party hereto shall be deemed to be in default of any provisions hereof for any delay, failure in performance or interruption of services resulting directly or indirectly from Acts of God or military authority, acts of public enemy, civil disturbance, acts of terrorism, acts of war whether declared or not, accidents, fires, explosions, earthquakes, floods or any other natural disaster or any other event beyond the reasonable control of any party (hereinafter referred to as 'Force Majeure Events') provided that the Party facing such Force Majeure Event shall promptly issue a notice in writing to the other Party(a 'Force Majeure Notice') detailing the occurrence of such Force Majeure Event and its anticipated effect upon the performance of the Agreement. As appropriate the Force Majeure Notice shall also state any extension of time that is required by such Party and the details of any alternative method sought by such party to fulfil its contractual obligations under the Agreement and additional costs, if any, involved in such alternative method

1.18. Assignment

The Client may not sell assign transfer or otherwise dispose of any rights or delegate any obligations under this Agreement without the prior written consent of OMAK first had and obtained.

1.19. General

1.19.1. Nothing contained in this Agreement shall be construed so as to constitute any party to this Agreement a partner, agent or representative of the other or to create any trust or partnership with any person or company or commercial entity for any purpose whatsoever.

1.19.2. In the event any of these terms, conditions, or provisions or those of any schedule or attachment hereto will be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provisions will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

1.19.3. Any notice, demand or request to be given or made under this Agreement or required by statute, or law, shall be in writing by letter to the addressees, and will be delivered in person, sent by facsimile or registered mail (properly posted and fully

prepaid in an envelope properly addressed) or sent by facsimile or by e-mail to the respective parties as follows:

To OMAK

To the attention of: OMAK Management

Address: 15, Flower Road, Colombo 7

Telephone No.: +94114386653

Email Address: info@omak.co

To Client – As mentioned in the signed Contract