Contract

To utilise the full facilities of Evolution on line certain conditions and requirements must be met, and are as follows:

Connection Requirements

An ADSL connection with a fixed IP address is required. The ADSL connection should be a minimum of 256kb upstream and 512kb downstream although a 1MByte downstream connection is recommended for optimum performance. BMS Solutions cannot be held responsible for your Internet connection, or any problems with connectivity that arise from the third party provider

Windows PC Workstations

The PC workstations should be running a minimum of Windows 2000 or XP with at least 256MByte of memory and 100Mbytes of hard disk space and have connection to the Internet for browsing.

Before installing the Evolution client software each PC workstation **MUST** be updated to the latest revision of the currently installed Windows software and also checked for viruses and spy-ware. Please note that viruses and spy-ware can dramatically affect the performance and reliability of your PC and may cause the Evolution On-Line client not to install or run correctly.

PC Protection

We suggest you protect your PC with firewall anti-virus and anti-spyware software, but BMS will not be responsible for the set-up, function or effectiveness of this third party software. If you already have a firewall, virus software or anti-spy-ware software installed adjustments may be required to this hardware or software to allow the installation and running of the Evolution client.

While every effort has been made to ensure the Evolution client will run on all PC workstations meeting the above specification Bodyshop Management Solutions Ltd makes no guarantees as to the suitability and or performance of the Evolution software although we will endeavor to assist in identifying any technical issues.

If you are providing your own internet connection you will either need to open specific ports on your firewall or request your ISP or technical advisor to open these ports. The ports are detailed below.

Local Printers

Most printers will operate with Evolution On-Line although no guarantees are made to the suitability of individual printers.

Barcode Reader

When a barcode reader is employed to utilize the TRIM software this will need to be connected to the local network. This connection will require a dedicated network connection via either the ADSL router/modem or a connection on a HUB.

Third Party Links and Interfaces

Evolution On-Line supports links to Audatex and Glasses smart estimating systems. A link is also available to post invoices automatically from the Evolution On-Line management system to Sage

Line 50 accounts. Some information may be required to be communicated to BMS or inserted into the system before the links can become active and it is the client who must ensure this information is correct and inserted in the correct place.

Links to the third party systems are dependant on the correct configuration of these products and these products should not be modified or upgraded without first notifying BMS Ltd as this may cause the link to stop working or malfunction.

Training, tutorials and support

The system is provided with an online tutorial. Telephone support will be provided between the hours of 9:00am to 5:30pm Monday to Friday. Telephone support is made using the telephone number advertised on the initial screen or via the help drop down menu.

While assistance will be given in setting up your connection and to any other support requirements if it is deemed necessary to attend your site BMS Ltd reserves the right to charge for this visit at our standard rates. Our current rate is £180.00 callout, which includes the first hour onsite and a charge of £90 per hour thereafter.

Pre set-up requirements

You will be required to provide an estimate of the number of Jobs and Invoices you raise on a monthly basis. This information is used only to estimate the space and transaction usage.

You will be required to supply a list of staff, first and second name, which will need access to the Evolution On-Line system. A unique login ID will be provided by BMS Ltd for each user of the system. When users are required to be added or deleted you will need to notify BMS Ltd by telephone and followed with written confirmation by fax.

If Sage Line 50 accounts are used and you are going to use the automatic posting routine you will need to provide a list of nominal (general) ledger codes you wish to be updated.

Contract Length and cancellation Policy

The use of the Evolution Bureau system is for a minimum period of 3 months and paid for in advance and is non redeemable, thereafter 1 months notice must be given to cancel the contract.

Payment

Payments will be taken monthly in advance by direct debit mandate. The initial 3-month payment will be paid prior to any service being provided.

TERMS AND CONDITIONS

1   DEFINITIONS

a) "Customer" means the party named as the customer on the cover of this document.
b) "Supplier" means Bodyshop Management Solutions Ltd.
c) "Services" means the modules and training as detailed in the order form attached to this document as further defined by this agreement.
d) "Modules" means the module products listed in the schedule attached to this agreement.

2   ACCEPTANCE OF AGREEMENT

The acceptance of this agreement denoted by the signature on the schedule of an authorised signatory of the parties will create a contract between the Supplier and the Client and will be construed as confirming the clients total acceptance of these terms and conditions subject as may otherwise be agreed in writing by both parties.

3   PRICES

a) The prices for the modules are stated in the schedule attached to this document.
b) The price quoted for telephone support is in respect of access by telephone to the Supplier's support staff during the hours and on the days detailed in clause 6(b) for the period defined in the schedule attached to this agreement. The Telephone Support services provided are further detailed in clause 6.
c) All prices are exclusive of Value Added Tax. VAT and/or any other similar tax, which may be imposed from time to time, will be applied in accordance with UK legislation in force at the tax point date.

4   TERM

a) This agreement will commence on the date as specified in the attached schedule.
b) The Customer may cancel the contract by giving three months written notice.

5   PAYMENT TERMS

Unless otherwise specified on the schedule attached to this document the first 3 months of the contract shall be paid upfront. Thereafter, a direct debit shall be set-up and paid monthly one month in advance. If any sum payable under these terms and conditions becomes overdue the Supplier reserves the right to cancel access to the modules until such time as funds are cleared. Moreover, if 3 months pass without payment, the supplier can cancel the contract and all data held may be erased.

6   TELEPHONE SUPPORT

a) Telephone Support will be provided for all paid for modules specified in the schedule attached to this Agreement.
b) Telephone Support is provided from Monday to Friday inclusive 9.00am to 5.30pm excluding Bank and Public Holidays unless specified as otherwise in the schedule.
c) Telephone Support may be provided using remote diagnostic facilities over communications lines. The supplier reserves the right to specify and approve the type of communications equipment required by the Customer in order to provide a remote diagnostic service.
d) Telephone Support services may be requested by the Customer on an ad-hoc basis outside the hours of cover specified in Clause 6(b) of this Agreement or attached schedule and the Supplier will use best endeavours to respond to such requests. All

such requests will be the subject of an additional charge, which shall be quoted by the Supplier at the time of any such request.

e) Services rendered by the supplier for malfunction caused by modification to the software or equipment performed by the Customer or his Agent without the prior written consent of the Supplier then the Supplier reserves the right to charge all time materials and costs incurred in the resolution of the malfunction.

f) Services rendered by the Supplier for malfunction caused by misuse or data corruption then the Supplier reserves the right to charge all time materials and costs incurred in the provision of recovery services to restore proper system operation.

g) Services rendered by the Supplier for malfunctions caused by computer virus and or spy-ware and or adware or by the removal of computer virus and or spy-ware and or adware then the Supplier reserves the right to charge all time materials and costs incurred in the resolution of the malfunction.

The Supplier accepts no responsibility either direct or implied however caused for: -

i) Any damage to or loss of computer data system program or application program caused by computer virus or spy-ware and or adware or the removal of computer virus and or spy-ware and or adware.

ii) Consequential losses caused by computer virus and or spy-ware and or adware or the removal of computer virus and or spy-ware and or adware.

7   ON-SITE SUPPORT

a) All requests by the Client for on-site support will be responded to on a best endeavours basis and the Supplier reserves the right to charge all time materials and costs incurred. For charges and support details please refer to contract

8   SOFTWARE PRODUCT MAINTENANCE

a) Updates to the Software will be provided during the term of this Agreement as made available by the Software originator. An update consists of a revised version of the Software issued by the Software's originator and considered by that originator to be a new release of the current product as opposed to a new version for which a separate charge may be made.   This Agreement ensures that the Customer's software licences in respect of the Software will be kept up to date and current

9   INFORMATION

a) The Client agrees to make available to the Supplier's staff all information concerning its operations as may be necessary for the fulfilment of the Supplier's obligations under this Agreement.

10   PATENTS AND COPYRIGHTS

Copyright subsists in proprietary Software supplied by the Supplier under licence also in software supplied to the Client under licence from other vendors and all documentation relating thereto (whether printed or stored magnetically). This agreement does not vary the terms of any licence entered into by the Client relating to any software specified in the attached schedule and under no circumstances does the use acquisition or maintenance of such Software transfer copyright to the client.

11   CONFIDENTIALITY

All trade and professional secrets or other information supplied by either party to the other shall be kept confidential and such supply shall not imply any trainer of property. No restriction shall apply to such information that comes to the public domain other than by breach of this provision.

12   NO RECRUITMENT

a) The client agrees that during the term of this agreement and for a period of 12 months after its termination it will not employ or engage or offer to employ or engage any member of the Supplier's staff without the prior written consent of the Supplier. The Client further agrees that employment of or an offer to a person in breach of this clause shall result in the Client being liable to pay damages to the Supplier equivalent to 120 days work by the person in question at his or her then current daily fee.

b) The supplier agrees that during the term of this agreement and for a period of 12 months after its termination it will not employ or engage or offer to employ or engage any member of the Client's staff without the prior written consent of the Client. The Supplier further agrees that employment of or an offer to a person in breach of this clause shall result in the Supplier being liable to pay damages to the Client equivalent to 120 days work by the person in question at his or her then current daily fee.

13   LIABILITY

a) Neither party shall be liable for failure to perform its contractual obligations if such failure results from force majeure act of God governmental act fire explosion accidental industrial dispute or any other cause beyond the party's control.

b) The Supplier indemnifies the Client in respect of....

c) Direct physical damage to the Client's property, which is established to be the result of negligence by the Supplier or its servants or agents while on the Client's premises for the purpose of this contract. The supplier's liability for direct physical damage is limited to £500,000 in respect of any one event or series of related events.

d) Direct physical injury to or death of any of the Client's servants or agents resulting from the negligence of the Supplier or its servants or agents.

e) The Client indemnifies the Supplier in respect of....

f) Direct physical damage to the Supplier's property, which can be established to be the result of negligence by the Client or its servants or agents. The Client's liability for direct physical damage is limited to £500,000 in respect of any one event or series of events.

g) Direct physical injury to or death of any of the Supplier's servants or agents resulting from the negligence of the Client or its servants or agents.

h) In no event shall the Supplier be liable for special indirect or consequential damages.

14   TERMINATION

Either party shall be entitled to terminate this agreement by written notice to the other party if:

a) The other party shall commit a breach of any of its obligations under this agreement and shall not have remedied such breach within four weeks of receiving notice from the other party.

b) The other party shall become bankrupt or enter into liquidation or have a receiver appointed of its assets or any part thereof.

15   CONTRACT

The contract represents the entire agreement between the parties relating to all paid for modules and maintenance of the products listed on the attached schedule. Each party warrants that no representation not attached to this document has been made which has induced the other to enter in to this contract.

16   AMENDMENTS

No amendment is valid unless signed by an authorised representative of the Client and of the Supplier.

17   ASSIGNMENT

Neither party shall assign this contract without the express written permission of the other party.

18   NOTICES

Any notice given under this contract by either party to the other must be in writing and may be effected by personal delivery telex or facsimile or registered mail and shall in the case of facsimile be deemed to have been received on the same date as it was sent and in the case of postage within 48 hours after the date of posting.

19   BREACH

If either party makes default or commits any breach of its obligations under this contract and (upon receiving written notification from the other party of such default of breach) fails to remedy the default of breach within 4 weeks or is involved in any legal proceedings concerning its solvency or commences liquidation proceedings (except for the purposes of reconstruction) or ceases or threatens to cease trading or if serious doubt arises as to its solvency then the other party shall immediately become entitled (without prejudice to its other rights) to terminate this contract forthwith by notice in writing to the other.

20   ARBITRATION

Any dispute difference or question between the parties with respect of any matter arising out of or relating to this contract which cannot be resolved by the two parties within a reasonable period (but in any case not exceeding 60 days) shall be referred to the arbitration of a person to be appointed by the President of the Law Society in accordance with the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof.

21   JURISDICTION

This contract shall be governed by and construed in accordance with English Law and the parties submit to jurisdiction of the English Courts.