



Support & Maintenance Agreement

Cranbox Limited T/A Tesseract

Commencement Date:

.....

Our Support Number is:

.....

(Please do not call our general office number for software support)

Your Representatives are:

1.

(see clause 4.2 below)

2.

Software:

European Office

1 Newmans Row,
Lincoln Road,
High Wycombe,
Buckinghamshire
HP12 3RE UK

sales
+44(0) 1494 465066

support
0844 4820226

facsimile
+44(0) 1494 464756

email
sales@tesseract.co.uk

web
www.tesseract.co.uk



1. Support Services

- 1.1 Our support services are exclusively for the software specified in the table above which we have licensed to you under the terms of our software licence agreement ('the Software').
- 1.2 Contained within the Software may be proprietary software licensed to us by a third party or third parties ('3rd Party Software'). Our support services in connection with such 3rd Party Software are limited to the level of support we receive from the relevant third party.
- 1.3 We shall provide you with our support between 8.00a.m. and 6.00p.m. UK time excluding weekends and public holidays.
- 1.4 Support outside the times specified above is charged in addition to our Support Fees (defined in clause 6.1 below) at our current hourly rate plus out of pocket expenses.
- 1.5 Our support services are limited to telephone fault diagnosis and where possible recommendations for correction.
- 1.6 We shall use all reasonable efforts to respond to your telephone calls promptly and we aim to respond to all calls within 48 hours.
- 1.7 If a support request cannot be resolved within a reasonable time on the telephone, we may need to investigate the problem at our offices and you should either send the data in question to us by email or on disk.
- 1.8 If the problem you report to us is caused by hardware failure, software not covered by this Agreement, incorrect use of the Software, modification or enhancement of the Software not approved by us, or any reason external to the Software, we will charge for our time at our current hourly rate plus our out of pocket expenses.

2. Updates & Upgrades

- 2.1 We shall supply at no additional cost enhancements and upgrades of the Software, other than the 3rd Party Software, as they are released. We reserve the right to charge, in addition to the Support Fees (defined in clause 6.1 below), in respect of any additional amounts charged to us during the term of this Agreement by third parties in respect of the 3rd Party Software, including but not limited to upgrade and enhancement fees not otherwise charged to you under the licence agreement between us under which you are licensed to use the Software.
- 2.2 If you require our on site attendance to assist in installation, we shall charge for our services at our current hourly rate plus out of pocket expenses.

Cranbox Ltd.
Reg. Office
As above

Reg. in Cardiff
No. 2136682



3. Warranties & Disclaimers

- 3.1 We warrant that we shall provide the support and maintenance service under this Agreement with reasonable skill and care.
- 3.2 Where possible we shall pass on to you the benefit of any warranty for the support and maintenance of 3rd Party Software which we receive from the relevant third party, but cannot offer any warranty in respect of any particular support and maintenance of 3rd Party Software which we pass on to you which is recommended by the relevant third party.
- 3.3 We will use our reasonable endeavours to provide support promptly but no warranty is given in respect of any times for response or performance by us and time will not be of the essence.
- 3.4 Provision of the support does not imply any guarantee or representation that we will be able to assist you in achieving any results from the Software which are not technically feasible. Subject to this, any services which are outside the scope of this Agreement will, at your request and at our option, be provided at our then current rates for such services.
- 3.5 Provision of the support does not imply any guarantee that we will be successful in correcting Software malfunctions and we do not accept any liability in this connection, however we will use all reasonable endeavours to rectify any Software malfunctions.
- 3.2 We reserve the right to refuse to provide support and maintenance for the Software at any time without refunding any sums paid by you if:
 - 3.6.1 any attempt is made, other than by us, to remove any defects or deal with any errors in the Software; or
 - 3.6.2 any development, enhancement or variation of the Software is carried out other than by us or without our written consent; or
 - 3.6.3 the defect is caused by the use of the Software with programs not supplied by or approved in writing by us; or
 - 3.6.4 any of our invoices (whether under this Agreement or otherwise) are overdue, until full payment is made; or
 - 3.6.5 you do not install any enhancements or upgrades of the Software within a reasonable time of their delivery to you, and in any case within 28 days, until such enhancements or upgrades are installed.

4. Your Responsibilities

You agree to:

- 4.1 use the Software correctly and in accordance with its operating instructions;
- 4.2 designate, and name in the table above, two contacts appropriately qualified and trained by us to request the support, and inform us accordingly. Authorised use of the telephone helpline is limited to these designated contacts or approved replacements;
- 4.3 maintain procedures to facilitate reconstruction of any lost or altered files, data or programs and you agree that we will not be liable under any circumstances for any consequence arising from lost or corrupted data, files or programs. You are solely responsible for carrying out all necessary backup procedures for your own benefit, to ensure that data integrity can be maintained in the event of loss of data for any reason;
- 4.4 notify us promptly of any Software malfunction and in any event within 7 days;
- 4.5 provide us with access to and use of information and facilities reasonably necessary to provide the support;
- 4.6 ensure that only properly trained employees operate or use the Software in accordance with the operating instructions and manuals supplied;
- 4.7 use the latest upgraded version of the Software;



page 3/5

- 4.8 not make any modification or addition to the Software except with our consent which shall not be unreasonably withheld.

5. Liability

- 5.1 We accept liability without limit for (i) death or personal injury caused by our negligence or the negligence of our employees acting in the course of their employment; (ii) any fraudulent pre-contractual misrepresentations made by us on which you can be shown to have relied; and (iii) any other liability which by law cannot be excluded.
- 5.2 We will accept liability to pay damages to you in respect of loss or damage arising out of our breach of contract or negligence. Subject to clause 5.1, our total liability to you arising out of or relating to this Agreement, including without limitation in respect of performance or non-performance of obligations, whether in contract, tort (including without limitation negligence), statute or otherwise, will not exceed an amount equal to our then current annual fee.
- 5.3 Notwithstanding clause 5.2 above, and whether or not you have advised us of the possibility of such loss arising or whether such loss was in the contemplation of the parties at the start of this Agreement, in no event will we have any liability, whether under contract, tort (including without limitation negligence) or otherwise, for any loss of profit or revenue, loss of production, loss of or corruption to data, loss of contracts or business opportunities, loss of goodwill or failure to achieve anticipated savings or benefits, or for any type of consequential, special or indirect losses or damages, or in all cases any associated costs and expenses.
- 5.4 We shall not be liable to you for any loss arising out of your failure to keep full and up-to-date security copies of your computer programs and data.

6. Fees & Payment

- 6.1 Our fees for support and maintenance of the Software (**'Support Fees'**) are our current standard annual charges.
- 6.2 Our Support Fees are payable quarterly in advance on or before the Commencement date, and thereafter on or before the date every three calendar months from the Commencement Date.
- 6.3 Any charges payable in addition to our Support Fees shall be paid on receipt of our invoice.
- 6.4 The Support Fees and all other sums due from you are exclusive of VAT which shall be payable in addition.
- 6.5 We shall be entitled to increase our charges from time to time to accord with changes in our standard scale of charges by giving you not less than three months prior notice.
- 6.6 Time for payment is of the essence. We reserve the right to charge you a compensatory fixed sum and statutory interest on overdue amounts in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 as amended by The Late Payment of Commercial Debts Regulations 2002. Interest shall be calculated on a monthly basis.
- 6.7 You waive any right to set off counterclaims against our Support Fees and other sums due

7. Duration & Termination

- 7.1 This Agreement shall commence on the Commencement Date.
- 7.2 Either of us may terminate this Agreement by giving to the other not less than three months' prior notice expiring on any anniversary of this Agreement.
- 7.3 We may terminate this Agreement immediately by notice if you:



page 4/5

- 7.3.1 are in breach of any of your obligations under this Agreement or the licence agreement under which you are licensed to use the Software and, in the case of a breach capable of remedy, fail to remedy the same within 30 days after receipt of notice giving full particulars of the breach and requiring it to be remedied. A breach shall be considered capable of remedy if you can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence);
- 7.3.2 make any voluntary arrangement with your creditors or become subject to an administration order;
- 7.3.3 have a receiver or administrative receiver appointed over any of its property;
- 7.3.4 go into liquidation; or
- 7.3.5 ceases, or threatens to cease, to carry on business.
- 7.4 This Agreement will automatically terminate on the termination of the software licence agreement relating to the Software.
- 7.5 On termination you will not be entitled to any refund or compensation.
- 7.6 Termination of this Agreement shall not affect either of our rights and liabilities subsisting at the date of termination.

8. Third Party Beneficiaries

A person who is not a party to this Agreement has no right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

9. Force Majeure

- 9.1 If we are prevented from performing our obligations under this Agreement by reason of circumstances outside our reasonable control including without limitation any strike, lock-out or other form of industrial action (**'Force Majeure'**) we shall inform you immediately of the nature and extent of it and we shall not be liable for failure to perform those obligations whilst the Force Majeure continues.
- 9.1 If the circumstances preventing performance are still continuing 3 months from and including the date we send the notice specified in the sub-clause above then either party may terminate this Agreement by giving three months written notice to the other. This notice must be received whilst the circumstances are still continuing.

10. Applicable Law

English law applies to this Agreement and we both agree to submit to the non-exclusive jurisdiction of the English courts.

11. Amendment

No variation to this Agreement shall be effective unless made in writing and signed by both of us.

12. Assignment

- 12.1 You may not without our prior written consent assign or dispose of any of your rights under this Agreement.
- 12.2 We may assign the benefit of this Agreement, and you shall if requested at our expense enter into a novation of this Agreement with our assignee.
- 12.3 We may perform our duties or exercise our rights through our holding company or subsidiary or the subsidiary of our holding company and any act or omission of the other company shall be treated as ours.



13. Whole Agreement

- 13.1 This Agreement constitutes the entire Agreement between the parties and supersedes any previous Agreement with respect to the matters dealt with in the Agreement.
- 13.2 You acknowledge that in entering this Agreement you have not relied on or been induced to enter into this Agreement by any statement, representation, warranty or understanding of any person (whether a party to this Agreement or not) which is not set out in this Agreement.
- 13.3 You agree that you will have no right of action or remedy arising out of or in connection with any statement, representation, warranty or understanding of any person (whether or not a party to this Agreement) which is not set out in this Agreement. The only remedy available to you will be damages for breach of contract of the terms of this Agreement.
- 13.3 Nothing in this Section shall operate to limit or exclude any liability for fraud or deliberate concealment.

14. Waiver

Waiver by a party of a breach of any provisions of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision.

15. Notices

- 15.1 Notices under this Agreement shall be in writing and may be delivered by:
 - 15.1.1 first class post or by hand and addressed to the party concerned at its registered office or principal place of business;
 - 15.1.2 fax provided a confirmatory copy together with a copy of the relevant transaction report or slip printed by the transmitting machine is given by hand or sent by post within 24 hours of transmission addressed to the party concerned at its registered office or principal place of business; or
 - 15.1.2 by e-mail provided that a confirmatory copy together with a copy of any relevant transaction report or confirmation of sending produced by the transmitting computer is given by hand or sent by post within 24 hours of transmission addressed to the party concerned at its registered office or principal place of business.
- 15.2 Notices delivered by hand shall be deemed to have been given at the time of delivery.
- 15.3 Notices sent by post shall be deemed to have been received 48 hours after posting. In proving service by post (including proving postage of confirmatory copies of notices sent by fax or email) it shall only be necessary to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this Section.
- 15.4 A notice sent by fax or e-mail is to be treated as served on the day upon which it is sent or the next working day where the fax or e-mail is sent after 4 pm or on a day that is not a working day whenever and whether or not it or the confirmatory copy is received.

For and on behalf of Cranbox Limited
.....

Date
.....

For and on behalf of (the Licensee)
.....

Date
.....