Software Support and Maintenance Terms

1. Definitions and interpretation

1.1 This agreement uses some terms with special meanings. These terms are set out in schedule 1 to this agreement. The schedule also sets out some rules to be used in interpreting this agreement.

2. What this agreement is about

2.1 This is a software support and maintenance agreement between APT and Customer. It covers the provision of support and maintenance services (which will be referred to in this agreement as the "**Support Service**" or "**Support Services**") by APT to Customer from time to time.

2.2 The software in relation to which the Support Services are to be provided will be referred to in this agreement as the "**Software**". The Software is being licensed to Customer by APT and Customer's use of the Software is subject to the terms of the relevant licence agreement (which will be referred to in this agreement as the "**Software Licence**").

2.3 This agreement contains general terms relating to the provision of Support Services by APT to Customer from time to time. Before APT provides any such Support Services, APT and Customer will in each case first agree in relation to such Support Services:

(a) exactly what Software is to be supported and maintained;

(b) the level of support and maintenance to be provided; and

(c) any other relevant details.

In each case all of this information will be included in a document in the form set out in schedule 3 to this agreement (which will be referred to as the "**Support and Maintenance Form**") and which will be agreed and signed on behalf of APT and Customer. APT will not be liable to provide any Support Services unless and until a Support and Maintenance Form has been agreed and signed in relation to the Support Services concerned.

2.4 If a Support and Maintenance Form conflicts with the provisions of this agreement, then the provisions of that Support and Maintenance Form will take precedence in relation to the Support Service to be supplied in accordance with that Support and Maintenance Form.

2.5 Each Support and Maintenance Form will form a separate contract (a "**Contract**") between Customer and APT on the terms contained in the Support and Maintenance Form and in this agreement. Each contract will be separately terminable by either party in accordance with clause 10.

2.6 The Support Service only includes certain things and these are explained below (under the heading "**What Support Services are being provided by APT**"). There are some things that do **not** form part of the Support Service unless APT agrees otherwise and these are also explained below (under the heading "**What Support Services are not being provided by APT**").

2.7 Customer's right to provision of the Support Service under this agreement will continue for the period specified in clause 10.1 or until this agreement or the relevant Contract is terminated.

APT
Financial House
14 Barclay Road   T   +44 (0)20 8760 9898   **Page 1 of 10**
Croydon   F   +44 (0)20 8760 9798
Surrey   E   info@aptbacs.co.uk   Registration No. 1328668
CR0 1JN   W   www.aptbacs.co.uk   VAT No. 407 6183 56

3. The Software covered by the Support Services

3.1 The Software being supported and maintained under this agreement is the machine-operable version of each of the items of Software listed in the Support and Maintenance Form, including where applicable any relevant file input or other software templates (and reference in this agreement to the "**Software**" is intended to refer **only** to this Software).

3.2 This agreement applies to:

(a) the Software listed in the Support and Maintenance Form; and

(b) any corrected or updated versions of the Software which APT may supply to Customer in accordance with this agreement.

3.3 This agreement applies only to the machine-operable versions of the Software and does not cover any services in relation to source code versions (unless this agreement expressly states otherwise).

4. What Support Services are being provided by APT

4.1 APT will provide the following as part of the Support Service:

(a) a telephone helpline service as described in more detail in clause 4.5;

(b) an Error correction service as described in more detail in clause 4.6;

(c) an Update service as described in more detail in clause 4.7.

All of these services include only those services described in detail in this clause 4 and are subject to the exclusions in clause 5.

4.2 In addition, if the Support and Maintenance Form states that the level of support and maintenance being provided is Premium Maintenance, APT will also provide the additional premium maintenance support services set out in schedule 2 (which will be referred to in this agreement as the "**Premium Maintenance Services**") as part of the Support Service. All of the Premium Maintenance Services include only those services described in detail in schedule 2 and are subject to the exclusions in clause 5.

4.3 If the Support and Maintenance Form states that the level of support and maintenance being provided is Standard Maintenance, APT may agree from time to time to provide Premium Maintenance Services to Customer on a one off basis (but is under no obligation to do so). If it does so, APT will charge Customer for such Premium Maintenance Services on a time and materials basis.

4.4 The Support Services will only be provided during the hours set out in the Support and Maintenance Form (which are referred to as "**Support Hours**"). APT does not have to provide any Support Services outside Support Hours unless it agrees otherwise. Support Services supplied outside Support Hours may be charged for on a time and materials basis.

4.5 The telephone helpline service shall be provided as follows:

(a) the service may be accessed during Support Hours by telephoning the number referred to in the Support and Maintenance Form. The number may be changed from time to time, in which case APT will notify Customer of the new number;

(b) APT will make sure that suitably qualified staff are available on the helpline number during the hours referred to;

(c) APT's staff will use their reasonable efforts to resolve any reasonable query relating to the Software or its use or operation referred to them by Customer's staff.

4.6 The Error correction service shall be provided as follows:

(a) an "**Error**" for these purposes is any material defect in the Software which has an adverse effect on its use or operation. Problems arising from the causes listed in clause 5.1 will **not** be treated as Errors for the purpose of this agreement;

(b) if an apparent Error in the Software occurs, Customer must notify APT as soon as it is reasonably possible to do so. Notification may be by phone, fax or e-mail (via the numbers and e-mail address referred to in the Support and Maintenance Form);

(c) APT will then use its reasonable efforts to correct the Error;

APT
Financial House
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(d) once APT has corrected the Error, it will notify Customer. If appropriate APT will then supply a corrected version of the Software to Customer and, if requested by Customer, will give Customer instructions on how to install the corrected version of the Software. Customer will be licensed to use the corrected version of the Software on the terms set out in the relevant Software Licence;

(e) APT may use any reasonable means to correct Errors. It does not have to attend on site unless it wishes to, unless attendance on site is the only reasonable means of correcting the Error. If requested by APT, Customer will (provided that it is technically possible to do so) make a copy of the Software in which the Error has been identified and will send that copy to APT by the quickest reasonable means;

4.7 The Update service shall be provided as follows:

(a) an "**Update**" for these purposes is a corrected or Updated version of the Software other than one:

(i) which includes substantial new functionality as compared to the version already in use by Customer; or

(ii) which is intended for use with a different operating system or different equipment to that with which Customer is licensed to use the Software under the relevant Software Licence;

(b) if while this agreement is in force APT makes an Update generally available to its licensees, it will make this Update available to Customer under this agreement and without additional charge. All such Updates will be made available on APT's Web site, the URL of which is http://www.aptbacs.co.uk (the "**APT Web Site**") and Customer may access such Updates by using the user name and password given to it by APT to access the APT Web Site and to download the relevant Update. APT will use its reasonable efforts to contact Customer to notify it of the availability of Updates on the APT Web Site.

(c) Customer must install and implement Updates within 28 days of being notified that they are available on the APT Web Site.

5. What Support Services are <u>not</u> being provided by APT

5.1 APT does not have to provide Support Services (either telephone advice or Error correction) in relation to queries or Errors arising because of any of the following:

(a) misuse of the Software (which includes any use of the Software that is not in accordance with the relevant Software Licence);

(b) use of the Software with an operating system or on equipment for which it was not intended or designed;

(c) defects in any hardware, equipment or firmware;

(d) defects in any Software other than the Software to which this agreement relates;

(e) the use of the Software with or on any equipment or operating system not approved by APT;

(f) the use of the Software with or in relation to any other Software not approved by APT;

(g) use of the Software by anyone who has not been properly trained. Anyone who has been trained by APT will be treated for these purposes as having been properly trained;

(h) failure to install any Updates which have been made available on the APT Web Site.

If APT provides Support Services in relation to an Error and it is found that the Error arose because of any of the above causes, APT may charge for all such Support Services on a time and materials basis.

5.2 Customer must comply with any reasonable instructions which APT gives Customer relating to the use of the Software. Customer must allow APT access to any premises controlled by Customer in order to allow APT to check that the Software is being used properly.

APT
Financial House
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Croydon
Surrey
CR0 1JN

T +44 (0)20 8760 9898
F +44 (0)20 8760 9798
E info@aptbacs.co.uk
W www.aptbacs.co.uk

Registration No. 1328668
VAT No. 407 6183 56

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6. Charges

6.1 The Support and Maintenance Form will set out the support and maintenance fees payable by Customer in relation to the Support Service to be supplied in accordance with that Support and Maintenance Form. The charges will be due on the dates (or on the happening of the events) specified in that Support and Maintenance Form.

6.2 If for any reason the Support and Maintenance Form does not specify the charges for any services to be supplied by APT in accordance with that Support and Maintenance Form then the applicable charges will be APT's then current standard rates for the supply of such services and will be due immediately following provision of such services. If APT agrees to install any corrected versions of the Software or any Updates or to provide any additional training in relation to the Software, then APT will charge for these services at its then current standard rates and will also charge Customer for its reasonable travel costs and expenses incurred in providing these services. Such travel costs and expenses will include (where applicable) reasonable mileage charges and accommodation and subsistence costs.

6.3 APT may increase the support and maintenance fees payable under this agreement or any Contract. Only one increase may be made in relation to each Support Year (as defined in clause 8). If APT wants to increase the charges for a Support Year, it must notify Customer of the proposed increase at least 2 months before the beginning of the Support Year concerned. The revised support and maintenance fees will then apply in the following Support Year unless Customer terminates the Contract concerned in accordance with clause 10.2.

6.4 APT may invoice Customer for all charges as soon as they become due. Customer must pay the invoices within 30 days of receiving them (and if APT posts them to Customer, Customer will be treated as having received them two working days later).

6.5 If Customer is late in paying any invoices, then APT may if it wishes to do so charge interest on all unpaid amounts. Interest will be payable from the date of the invoice until the date of payment and will continue to be payable even if APT obtains a judgment from a court in relation to any claim for payment of the invoice. The rate of interest will be 8% per year above the base rate for the time being of Barclays Bank.

6.6 The amounts specified in the Support and Maintenance Form do not include VAT or any other taxes on supplies (unless the Support and Maintenance Form expressly states otherwise) and Customer must pay these to APT as well as the amounts concerned.

7. Warranties

7.1 APT warrants that all services provided by APT under this agreement will be provided:

   (a) with reasonable care and skill; and

   (b) by means of appropriately qualified and skilled personnel.

7.2 If the warranty in clause 7.1 is breached, Customer must tell APT as soon as possible. Before Customer is allowed to do anything else about it, Customer must give APT a reasonable time to fix the problem and (if necessary) to supply Customer with a corrected version of the Software or re-perform any relevant services. This will be done without any additional charge to Customer. If APT is unable to do this within a reasonable time or APT does not think that it is a sensible way to deal with the problem, then APT may decide to terminate the Contract concerned and refund to Customer the maintenance fees actually paid by Customer under that Contract in relation to the Support Year in which the Contract has been terminated (but not in relation to any other Support Year).

7.3 It is a condition of this agreement that APT is entitled to supply any corrected or updated versions of the Software (including any new templates) and to allow Customer to use them in accordance with the terms of the relevant Software Licence.

APT
Financial House
14 Barclay Road   T   +44 (0)20 8760 9898   **Page 4 of 10**
Croydon   F   +44 (0)20 8760 9798
Surrey   E   info@aptbacs.co.uk   Registration No. 1328668
CR0 1JN   W   www.aptbacs.co.uk   VAT No. 407 6183 56

7.4   Apart from the terms set out above, no conditions, warranties or other terms apply to the Support Services, any corrected or updated versions of the Software or to anything else supplied under this agreement. In particular, no implied terms relating to satisfactory quality or fitness for any particular purpose will apply to anything supplied under this agreement. Also, it is not a term of this agreement that use of the Software will be uninterrupted or Error-free or that provision of the Support Services will ensure that this is the case.

7.5   APT will not be liable for breach of any of the warranties or other terms in this agreement to the extent that the breach arises from:

(a)   use of the Software other than in accordance with normal operating procedures as notified to Customer by APT;

(b)   any alterations to the Software done by anyone other that APT or someone authorised by APT;

(c)   any problem with the computer on which the Software is installed, any equipment connected to that computer or any other Software which is installed on that computer;

(d)   any abnormal or incorrect operating conditions;

(e)   any other hardware or Software being used with the Software, unless this use has been approved by APT.

8.   Exclusions and limitations

THIS IS AN IMPORTANT CLAUSE. ITS EFFECT IS TO LIMIT APT'S LIABILITY UNDER THIS AGREEMENT. CUSTOMER SHOULD READ IT CAREFULLY AND MAKE SURE CUSTOMER IS HAPPY WITH IT BEFORE SIGNING THIS AGREEMENT.

8.1   APT's liability:

(a)   for death or personal injury caused by APT's negligence or the negligence of APT's employees or agents;

(b)   under Part I of the Consumer Protection Act 1987;

(c)   for fraudulent misrepresentation,

is not excluded or limited by this agreement, even if any other term of this agreement would otherwise suggest that this might be the case.

8.2   Other than as set out in clause 8.1, APT shall **not** be liable (whether for breach of Contract, negligence or for any other reason) for any:

(a)   loss of profits;

(b)   loss of sales;

(c)   loss of revenue;

(d)   loss of use of any Software or data;

(e)   loss of use of hardware, Software or data;

(f)   loss or waste of management or staff time;

(g)   indirect, consequential or special loss.

8.3   Subject to clauses 8.1 and 8.2, APT's **total liability** under each Contract and in relation to anything which APT have done or not done in connection with the contract concerned (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be limited to an amount equal to 125% of the total amount paid or payable by Customer for the Support Services during the most recent Support Year in relation to which the Support Services have been provided.

APT
Financial House
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9.   Confidentiality and data protection

9.1   APT will keep confidential any information which Customer supplies to APT in connection with this agreement and Customer must do the same in relation to any information which APT supplies to Customer (which will include any corrected or updated versions of the Software).   This will not apply to any information which:

(a) is available to the public other than because of any breach of this agreement;

(b) is, when it is supplied, already known to whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;

(c) is independently obtained by whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;

(d) is trivial or obvious; or

(e) is required to be disclosed by law or by any court or tribunal with proper authority to order its disclosure.

9.2   In the course of APT providing services under this agreement, it may be necessary from time to time for APT to have access to personal data belonging to or retained by Customer and for APT to process that personal data on behalf of Customer.

9.3   In relation to any transfer and processing of personal data as referred to in clause 9.2:

(a) it is the intention of the parties that:

(i)   Customer will be the data controller; and

(ii) APT will be a data processor;

(b) Customer will:

(i)   ensure that it is fully and lawfully entitled to transfer the relevant personal data to APT so as to allow APT lawfully to process the personal data in accordance with this agreement on behalf of Customer;

(ii) subject to APT complying with its obligations under this agreement, be responsible for ensuring that the processing of the personal data complies with the Data Protection Act 1998 (including the eight principles set out in the Data Protection Act 1998). This includes taking all steps necessary (including, where appropriate, obtaining consent from each of the relevant data subjects) so as to ensure that the transfer to APT of the personal data and its processing by APT in accordance with this agreement complies with the Data Protection Act 1998;

(c) APT will process the personal data only in accordance with:

(i)   the terms of this agreement; and

(ii) any instructions given by Customer from time to time;

(d) each party will take appropriate technical and organisational measures against:

(i)   unauthorised or unlawful processing of the personal data; and

(ii) accidental loss or destruction of, or damage to, the personal data.

APT
Financial House
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Croydon
Surrey
CR0 1JN

T   +44 (0)20 8760 9898
F   +44 (0)20 8760 9798
E   info@aptbacs.co.uk
W www.aptbacs.co.uk

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10. Term and termination

10.1 This agreement will commence on the date set out in the front sheet and it will then continue until terminated in accordance with its terms. Each Contract will commence on the date set out in the relevant Support and Maintenance Form and will then continue on an annual basis until terminated in accordance with this clause 10. Each period of one year running from the date in the relevant Support and Maintenance Form and from each following anniversary of that date will be referred to as a "**Support Year**".

10.2 APT or Customer may terminate any Contract by giving not less than one month's notice, provided that such a notice must expire on the last day of a Support Year.

10.3 APT or Customer may terminate a Contract if:

(a) the other breaches the Contract and it is not possible to remedy that breach; or

(b) the other breaches the Contract and it is possible to remedy that breach, but the other fails to do so within 30 days of being asked to do so.

10.4 APT or Customer may terminate this agreement (and all Contracts entered into in relation to it) if:

(a) any distress or execution is levied on any of the other's property or assets;

(b) the other makes or offers to make any arrangement or composition with creditors;

(c) any resolution or petition to wind up the other's business (other than for the purpose of amalgamation or reconstruction) is passed or presented or if a receiver or administrative receiver of the other's undertaking, property or assets is appointed or a petition presented for the appointment of an administrator.

(d) the other is subject to any proceedings which are equivalent or substantially similar to any of the proceedings under sub-clause (a), (b) or (c) under any applicable jurisdiction.

10.5 APT or Customer may terminate any Contract immediately if the Software Licence under which the Software being supported and maintained under such Contract is used comes to an end.

10.6 Apart from any other rights which APT might have, if Customer breaches any Contract, APT may suspend performance of any of its obligations under the relevant Contract until Customer remedies the breach to the reasonable satisfaction of APT.

11. What happens if the agreement is terminated

11.1 On termination of this agreement for any reason all Contracts will automatically terminate.

11.2 Termination of any Contract or of this agreement will not affect any accrued rights or liabilities which either APT or Customer may have by the time termination takes effect.

APT
Financial House
14 Barclay Road   T   +44 (0)20 8760 9898   **Page 7 of 10**
Croydon   F   +44 (0)20 8760 9798
Surrey   E   info@aptbacs.co.uk   Registration No. 1328668
CR0 1JN   W   www.aptbacs.co.uk   VAT No. 407 6183 56

12. Other terms

12.1 Customer may not sub-license any of Customer's rights under this agreement or any Contract. Customer may not assign any of Customer's rights or obligations under this agreement or anty Contract without APT's consent. APT reserves the right to charge Customer a reasonable administration fee in relation to any such assignment.

12.2 APT may sub-contract the performance of any of APT's obligations under this agreement or any Contract. APT may assign this agreement or any Contract or any of APT's rights or obligations under this agreement or any Contract to someone else.

12.3 APT will not be liable to Customer for any breach of this agreement or any Contract which arises because of any circumstances which APT cannot reasonably be expected to control.

12.4 All notices and consents relating to this agreement or any Contract must be in writing. All variations to this agreement or any Contract must be agreed, set out in writing and signed on behalf of both APT and Customer before they take effect.

12.5 This agreement and any relevant Support and Maintenance Form sets out all of the terms that have been agreed between APT and Customer in relation to the subjects covered by it. Subject to clause 8.1(c), no other representations or terms shall apply or form part of this agreement or any Contract.

12.6 No term of this agreement or any Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement.

12.7 This agreement is governed by English law. Both APT and Customer submit to the exclusive jurisdiction of the English courts in relation to any dispute concerning this agreement or any Contract.

APT
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Surrey   E   info@aptbacs.co.uk   Registration No. 1328668
CR0 1JN   W   www.aptbacs.co.uk   VAT No. 407 6183 56

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SCHEDULE 1

1.   Definitions

1.1   In this agreement the following terms shall have special meanings:

"**Contract**" means as defined in clause 2.5;

"**Error**" means as defined in clause 4.6(a);

"**Support and Maintenance Form**" means as defined in clause 2.3;

"**Premium Maintenance Services**" means as defined in clause 4.2;

"**Software**" means as defined in clause 3.1;

"**Software Licence**" means as defined in clause 2.2;

"**Support Hours**" means as defined in clause 4.4;

"**Support Service(s)**" means as defined in clause 2.1;

"**Support Year**" means as defined in clause 10.1; and

"**Update**" means as defined in clause 4.7(a).

1.2   For the purposes of this agreement, the following terms have the same meaning as in the Data Protection Act 1998:

(a)   personal data;

(b)   data controller;

(c)   data processor;

(d)   processing; and

(e)   data subject.

1.3   Any Software supplied under this agreement will not be treated as goods within the meaning of the Sale of Goods Act 1979. Otherwise, the term "**goods**" will have the meaning given to it in that Act.

2.   Interpretation
2.1   In this agreement, unless it says otherwise:

(a)   reference to a person includes a legal person (such as a limited company) as well as a natural person;

(b)   reference to this agreement includes reference to the front sheet, schedules and appendices and other documents attached to in it or incorporated by reference into it (all as amended or added to from time to time);

(c)   reference to "including" in this agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words;

(d)   reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation;

(e)   references to clause numbers or schedules shall be to those in this agreement;

(f)   reference to this agreement shall include reference to it after it has been amended, added to or replaced by a new agreement.

APT
Financial House
14 Barclay Road   T   +44 (0)20 8760 9898
Croydon   F   +44 (0)20 8760 9798
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SCHEDULE 2

Premium Maintenance Services

1. Remote re-installation of the Software;

2. Creation of new templates due to change in input file layout or new application (up to 10 templates per Support Year);

3. Provision of Emergency Contingency Licence, i.e. a second copy of the Software to be installed on another PC which can be activated, when required, with a registration code obtained from APT;

4. Provision of emergency BACS payment processing as follows:

   (a) Subject to clauses 4(c) and 4(d) of this schedule 2, if Customer notifies APT of an Error which arose because of any of the causes set out in clauses 5.1 (c) or (d) and which is preventing processing of BACS payments, APT will process or arrange for the processing of Customer's BACS payments until such time as Customer is able to resolve such Error.

   (b) Subject to clauses 4(c) and 4(d) of this schedule 2, such BACS processing will be provided or arranged by APT free of additional charge, provided that Customer is able to supply the necessary data in suitable electronic form no later than 4.30pm the day prior to the day on which the data is to be processed. APT will charge for any manual data input at its then current standard rates for such manual data input services.

   (c) APT reserves the right to make an additional charge for assistance outside Support Hours (at its then current rates for such services). APT also reserves the right to request the reinstallation of the Software at the Customer's site or at an alternative site to enable the Customer to resume BACS file transmission itself. In such a case, the reinstallation copy of the Software will be supplied by APT free of additional charge but the Customer will be liable to pay APT the applicable installation charges (at its then current rates for such installation services) and any related travelling expenses.

   (d) Where the relevant Software Licence states that the Software is being licensed for BACS bureau use, then APT will process or arrange for the processing of Customer's BACS payments for up to 5 consecutive working days from the date on which Customer notified APT that the relevant Error was preventing processing of BACS payments, subject to a limit of 10 working days processing per calendar month. If Customer requests any additional processing above these limits, APT may charge for all such additional processing at its then current rates for such processing.

APT
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CR0 1JN   W   www.aptbacs.co.uk   VAT No. 407 6183 56

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