

SOFTWARE MAINTENANCE AGREEMENT

1. DEFINITIONS

In this Agreement, the following terms shall have the following meanings:

“Bleep”	Bleep 2000 (Computers) Limited trading as Bleep Computing.
“Billing Rates”	Bleep’s personnel charges as notified from time to time to the Client, the current ones being set out in Invoice.
“Intellectual Property Rights”	All copyrights, patents, database rights, domain names, registered and unregistered design rights, topography rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world.
“Maintenance Fee”	The periodic fee specified in Invoice payable by the Client to Bleep in respect of the Maintenance Services subject to any increases pursuant to Clauses 3.2 and 3.6 below.
“Maintenance Services”	The provision by Bleep to the Client of technical support services in accordance with Clause 2.1 below.
“Service Levels”	Service levels as set out in the Invoice.
“Software”	The software identified in the Invoice as may be modified by agreement of the parties from time to time.
“Start Date”	The date set out in the Invoice.
“Term”	A period of twelve months measured from the Start Date or any anniversary thereof.
“Terms and Conditions”	Bleep's general terms and conditions which also apply to the provision of the Maintenance Services to the extent that they do not conflict with this Agreement.
“Updates”	Corrections, by-passes or revisions to the Software which add no functionality to the Software.
“Upgrade”	A modification to the Software which increases the functionality of the Software.
“Working Day”	Monday to Friday inclusive but excluding public and bank holidays.
“Working Hours”	9.30 a.m. to 5.30 p.m. London time on a Working Day.

2. THE MAINTENANCE SERVICES

- 2.1 In consideration of the payment of the Maintenance Fee and any other fees payable pursuant hereto by the Client to Bleep, Bleep shall perform the Maintenance Services set out in Clauses 2.2 to 2.6 inclusive and expanded in the Service Levels from the Start Date.
- 2.2 Bleep shall supply to the Client any available Updates and the Client undertakes promptly to install any Updates supplied by Bleep in accordance with Bleep’s instructions.
- 2.3 Bleep shall offer to the Client during the term of the Agreement any Upgrades to the Software as soon as they are made available to other Clients of Bleep. Bleep may charge the Client for the Upgrades and their installation at the Billing Rates.

- 2.4 The Client shall be under no obligation to accept any Upgrades; provided, however, that if the Client elects not to accept any such Upgrade, Bleep shall only be required:
- 2.4.1 to perform the Maintenance Services with respect to the version immediately preceding the current version of the Software; and
 - 2.4.2 to use reasonable efforts to maintain any earlier version on a time and materials basis chargeable at the then current Billing Rates.
- 2.5 Bleep shall provide a telephone advice line and email-based service during Working Hours through which Bleep shall use all reasonable endeavours to ensure that the Software operates in all material respects by diagnosing and correcting any inherent material defect, error or other non-conformity in the Software in accordance with the Service Levels.
- 2.6 To invoke technical support, the Client must follow any reasonable notification and operational procedures specified in writing by Bleep from time to time.
- 2.7 Bleep shall be relieved of all obligations hereunder if the Software or any part thereof is modified by or on behalf of the Client in any way, whether or not intentionally, without Bleep's prior written authorisation.

3. CHARGES

- 3.1 The Maintenance Fee shall cover the provision of the Maintenance Services only in relation to the Software and not to other software.
- 3.2 The Maintenance Fee for the first Term shall be paid by the Client to Bleep on or prior to the Start Date. Should the number of users licensed to use the Software be increased, the Maintenance Fee shall be increased accordingly in accordance with Invoice. Where such increase in users occurs part way through a Term, the increase in the Maintenance Fee shall be pro-rated for the remainder of the then current Term accordingly.
- 3.3 The Client may extend this Maintenance Agreement by paying the then prevailing Maintenance Fee before the expiry of the then current Term.
- 3.4 Subject to any contrary provision in this Agreement, the Client agrees to pay the Maintenance Fee for the first Term on or before the Start Date and the Maintenance Fee for any subsequent Term before the start of that Term.
- 3.5 If the Client fails to pay any sum due hereunder in accordance with the provisions of this Agreement, Bleep shall be entitled to charge interest on a daily basis on all overdue amounts and on outstanding interest from the date of such failure until

- payment (both before and after judgement) at an annual rate of 3% above the base rate for the time being in force of Barclays Bank plc.
- 3.6 Bleep shall be entitled to increase the Maintenance Fee with effect from the next Term subject to prior written notice to be given at least 14 days before the expiry of the then current Term to the Client and not in excess of twice the published percentage change in the United Kingdom Retail Prices Index over the previous calendar year.
- 3.7 Bleep will be entitled to charge the Client additional charges, at its Billing Rates, for time which in the reasonable opinion of Bleep it spends in relation to or on account of
- 3.7.1 data restoration and/or re-establishment or other assistance required by the Client which does not result from inherent errors in the Software or anything caused by the act or omission of Bleep;
- any of the following:
- 3.7.2 setting up the Software on new hardware;
- 3.7.3 unauthorised use of the Software or use otherwise than in accordance with this Agreement;
- 3.7.4 inadequate back-up procedures;
- 3.7.5 providing the Maintenance Services outside the Working Hours;
- 3.7.6 providing any other services not covered herein;
- 3.7.7 providing services to the Client in circumstances where any reasonably skilled and competent system administrator would have judged the Client's request to have been unnecessary;
- 3.7.8 training in use of Upgrades; and
- 3.7.9 providing the Maintenance Services to the Client where such support would in Bleep's reasonable opinion have been unnecessary if the Client had implemented Update(s) and Upgrade(s) supplied or offered to the Client pursuant to Clauses 2.2 and 2.3 above prior to the call for technical support.
- 3.8 Bleep may without prejudice to any other rights or remedies suspend the Maintenance Services hereunder on at least 30 days' written notice to the Client if the Client's account with Bleep is overdue for any reason not related to default of Bleep under this Agreement.
- 3.9 For the purposes of this Agreement, time of payment shall be of the essence.

4. INTELLECTUAL PROPERTY RIGHTS, WARRANTIES AND UNDERTAKINGS

- 4.1 Bleep warrants and undertakes to the Client to perform the Maintenance Services with reasonable care and skill in a timely and professional manner by appropriately skilled and qualified persons.
- 4.2 Bleep does not warrant that the Maintenance Services or other services provided hereunder will cause the Software to operate without interruption or error but will make all reasonable endeavours to ensure that it does.
- 4.3 The Client hereby warrants that it has not been induced to enter into this Agreement by any prior representations.
- 4.4 The Client undertakes to provide Bleep with access to the Client's production computer system via a secure modem link operating at the industry accepted bandwidth for the purposes of remote diagnostics.
- 4.5 Bleep warrants that for the Term of the Agreement:
 - 4.5.1 it has the authority to grant the rights to be granted to the Client hereunder;
 - 4.5.2 the performance of the Maintenance Services will not in any way constitute an infringement or other violation of any Intellectual Property Right of any third party; and
 - 4.5.3 it owns or has obtained valid licences of all Intellectual Property Rights which are necessary to the performance of any of its obligations hereunder;
 - 4.5.4 it will use its reasonable endeavours to maintain continuity in the staff engaged in the provision of the Maintenance Services.

5. LIABILITY

- 5.1 Bleep shall not be liable for any loss or damage of whatsoever nature suffered by the Client arising out of or in connection with any breach of this Agreement by the Client or any act, misrepresentation, error or omission made by or on behalf of the Client or arising from any cause beyond Bleep's reasonable control.
- 5.2 Bleep is not liable for any indirect loss, consequential loss, loss of profit, revenue, data or goodwill howsoever arising suffered by the Client or for any wasted management time, failure to make anticipated savings or liability of the Client to any third party arising in any way in connection with this Agreement, the development of the Software or otherwise whether or not such loss has been discussed by the parties pre-contract or for any account for profit, costs or expenses arising from such damage or loss.

- 5.3 Except as provided in Clause 5.4, the total aggregate liability of Bleep under this Agreement shall not exceed twice the Maintenance Fee payable for the Term during which such liability arises.
- 5.4 None of the Clauses above shall apply so as to restrict liability for death or personal injury resulting from the negligence of Bleep or its appointed agents.
- 5.5 If the Client procures goods or services from a third party identified or recommended to the Client by Bleep, Bleep shall not be responsible for any failure to perform by such third party unless it is an agent of Bleep.

6. TERM AND TERMINATION

- 6.1 This Agreement shall continue for a period of 12 months from the Start Date and thereafter from year to year unless and until the licence governing the Software expires or is terminated or this Agreement is terminated in accordance with the provisions of this Clause 6.
- 6.2 Either party may terminate this Agreement upon 30 days by written notice to the other in the event that any of the following occur:
 - 6.2.1 the other breaches any material term of this Agreement and such breach is incapable of remedy or, if the breach is remediable, it continues for a period of 30 days after written notice requiring the same to be remedied has been given to the party in breach.
 - 6.2.2 the other fails to pay any amount due hereunder within 30 days of its due date; or
- 6.3 Either party may terminate this Agreement with immediate effect upon written notice to the other in the event that in respect of the other party:
 - 6.3.1 an order is made or a resolution is passed for the winding up of the other party, or
 - 6.3.2 if a provisional liquidator is appointed in respect of the other party, or
 - 6.3.3 if an administration order is made in respect of the other party, or
 - 6.3.4 if a receiver is appointed in respect of the other party or all or any of its assets or if the other party is unable to pay any of its debts within the meaning of Section 123 of the Insolvency Act 1986, or
 - 6.3.5 if any voluntary arrangement is proposed under Part 1 of the Insolvency Act 1986 in respect of the other party.

- 6.4 Either party may terminate this Agreement at any anniversary of this Agreement by giving the other party not less than 30 days' written notice.
- 6.5 Termination of this Agreement shall be without prejudice to any other rights or remedies of the terminating party.
- 6.6 This Agreement shall terminate immediately and automatically if the licence governing the Software terminates.
- 6.7 This Agreement shall terminate automatically at the expiry of any Term if the Client has not by then paid the Maintenance Fee for the then newly commenced Term.
- 6.8 In the event that Bleep terminates this Agreement otherwise than for breach or default of the Client and such termination takes effect during the course of a period for which the Maintenance Fee has been paid, then Bleep shall in full and final settlement of its obligations and liability hereunder make a pro rata refund of such Maintenance Fee for the said unexpired Term.

7. GENERAL

- 7.1 Subject to Clause 7.2, this written Agreement together with the Invoice and the Terms and Condition, constitutes the entire agreement between the parties hereto relating to the subject matter hereof and neither party has relied on any representation made by the other party unless such representation is expressly included herein. . Nothing in this Clause 7.1 shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or innocent misrepresentation except to the extent (if any) that a court or arbitrator may allow reliance on the same as being fair and reasonable.
- 7.2 No change, alteration or modification to this Agreement shall be valid unless in writing and signed by duly authorised representatives of both parties.
- 7.3 If any provision of this Agreement or part thereof shall be void for whatever reason, it shall be deemed deleted and the remaining provisions shall continue in full force and effect.
- 7.4 The rights and obligations of the Client under this Agreement are personal to the Client and the Client undertakes that it shall not, without the prior written consent of Bleep, assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.
- 7.5 Bleep reserves the right to sub-contract any of the work required to fulfil its obligations hereunder.

- 7.6 Any notice given pursuant hereto may be served personally or sent by pre-paid registered letter or recorded delivery to the addresses given hereabove. Such notice shall be deemed to have been duly served upon and received by the addressee, when served personally, at the time of such service or, when posted, 48 hours after the same shall have been put into the post correctly addressed and pre-paid.
- 7.7 Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance hereunder (other than in relation to payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority.
- 7.8 Any delay or forbearance by either party in enforcing any provisions of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or right thereafter to enforce the same.
- 7.9 Clause headings have been included in this Agreement for convenience only and shall not be considered part of, or be used in interpreting, this Agreement.
- 7.10 This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.