



SOFTWARE MAINTENANCE AGREEMENT

DATE

PARTIES

- (1) **WAY FORWARD TECHNOLOGIES LIMITED** at Wellington ("the Supplier")
- (2) Gilbarco (NZ) on behalf of

BACKGROUND

The Licensee is a licensed user of the software package described in Part 3 of the Schedule to this Agreement ("the Maintained Software") and wishes to obtain software maintenance for the Maintained Software on the terms and conditions set out in this agreement.

IT IS AGREED by the parties:

1. SOFTWARE MAINTENANCE

1.1 Agreement to maintain software

The Supplier will provide the Licensee with software maintenance as defined in, and in the manner as set out in, clause 1.2 and other maintenance services if required by the Licensee from time to time and agreed by the Supplier on and subject to the terms and conditions of this agreement.

1.2 Software maintenance defined

"Software Maintenance" for the purposes of this agreement shall mean the following:

1.2.1 Technical Advice

Subject to clause 5.1.6, telephone support as described in Part 6 of the attached Schedule, shall be made available. The Supplier shall provide such other assistance which it, in its absolute discretion, shall deem reasonably necessary to overcome any problems with the Maintained Software from time to time.

1.2.2 Program Updates & Version Modifications

The Supplier will supply the Licensee with updates to the Maintained Software to correct errors in programs which have been brought to the attention of the Supplier and in addition, will supply any new revisions or modifications to the general release version of the Maintained Software at a rate lower than retail as nominated by the Supplier, except that the Licensee shall be obliged to reimburse the Supplier for the actual cost of any new manuals or floppy disks supplied.

1.2.3 Support Policy

A detailed description of the support policy is set out in the attached support policy document, which forms Appendix A.

2. UPGRADES

2.1 Testing

The Licensee is responsible for testing the Maintained Software in respect of any item unit or module of the Maintained Software.

2.2 Modifications

The Supplier will make such modifications to the Maintained Software as are appropriate for the purposes of upgrading any item unit or module thereof. Functionality will be maintained in accordance with the published specification of the Maintained Software.

2.3 Upgrade service

The Supplier's Software upgrade service shall include:

2.3.1 Reviewing the Maintained Software release notes;

2.3.2 Attending to any problems arising from system testing undertaken by the Licensee with the Maintained Software as upgraded from time to time;

Upgrade Service Continued

2.3.3 Retesting any changes made;

2.3.4 Issuing a new release of the Maintained Software for the changes made;

2.3.5 Documenting all changes.

2.4 Further work

If any further work is requested by the Licensee to take advantage of any new feature of the Maintained Software as upgraded from time to time such further work shall be charged to the Licensee in accordance with clause 5.

2.5 Supplier's exclusion of liability

The Supplier is not responsible for and shall not be liable for:

2.5.1 The integrity of any live or active data the Licensee may use when testing or using any software upgrades or software bug fixes;

2.5.2 Any loss or potential loss if revenue from any software or hardware modifications.

3. SERVICE FEE

3.1 Annual Maintenance Fee

The Licensee shall pay to the Supplier an annual maintenance fee at the rate and at the time specified in Part 1 and Part 4 of the Schedule respectively.

3.2 Review of Rates

The Supplier may review its standard rates for the Software Maintenance and other maintenance services annually as at each anniversary of the commencement date of this agreement.

3.3 Disbursements

In addition to the requirement to pay an annual maintenance fee, the Licensee shall pay to the Supplier the amount of any disbursements incurred by the Supplier in connection with this agreement (including toll calls, courier charges, disks and other media) upon receipt of a tax invoice supplied by the Supplier on a quarterly basis.

4. TERM

4.1 Annual Software Maintenance Period

Annual software maintenance period" for the purpose of this agreement shall mean the period of twelve (12) months commencing from the date of this agreement and each subsequent period of twelve (12) months commencing on the expiration of the immediately preceding twelve month period during the continuance of this agreement.

4.2 Termination

This agreement shall continue in force until terminated in any of the following ways:

4.2.1 By either party giving ninety (90) days' prior notice in writing before the expiration of any annual software maintenance period;

4.2.2 The Licensee may terminate this agreement at any time prior to the expiration of the then current annual software maintenance period after receiving notice of any increase in the annual software maintenance fee;

4.2.3 If the Licensee shall be in breach of any of the conditions of this agreement or shall fail to pay any annual charge made in terms of this agreement on the date specified for such payment and if after written notice of the breach (including non-payment) has been given to the Licensee by the Supplier, the Licensee fails to rectify the breach (including non-payment) within fourteen (14) days after receiving such notice, the Supplier may terminate this agreement at the expiration of the said fourteen (14) days. The Supplier's right to terminate shall be in addition to any other remedies available to the Supplier for any such breach or failure to pay;

4.2.4 Immediately, if the Licensee's licence from the Supplier to use the Maintained Software is terminated in which event the Supplier's obligations under this agreement shall terminate immediately;

4.2.5 Immediately, if the software content of the Maintained Software or the environment in which it executes is altered by the Licensee without the prior written consent of the Supplier.



5. OTHER MAINTENANCE SERVICES

5.1 Additional Services

The following services are not included in the Software Maintenance:

- 5.1.1 Repair of damage arising from changes, alterations, additions or modifications by a person not approved by the Supplier to undertake that work;
- 5.1.2 Repair of damage arising from a negligent act or misuse or omission of the Licensee or its employees;
- 5.1.3 Repair of damage caused by the failure of electrical power, air conditioning, humidity control or any environmental factor;
- 5.1.4 Repair of damage caused by the operation of the Licensee's hardware other than in accordance with the directions or recommendations of the hardware supplier or its servants or agents;
- 5.1.5 Repair of damage caused by an act of God, by flood or by fire not arising from the fault of the Supplier;
- 5.1.6 Investigation of any problem or inquiry which exceeds 15 minutes, where the Licensee has been advised of the estimated time to complete the investigation and the Licensee has approved the investigation continuing.

5.2 Request for Additional Services

At the Licensee's request the Supplier may provide any of the services referred to in clause 5.1 but the Supplier may take an extra charge for doing so.

6. ACCEPTANCE

6.1 Execution of Software Licence

A condition of acceptance of this agreement by the Supplier is the existence of an executed supplier licence agreement for the Maintained Software.

6.2 Acceptance by Supplier

This agreement will not be deemed to be accepted by the Supplier until the Supplier has executed this agreement.

6.3 This Agreement in force

This agreement will not be deemed to be in force until the Licensee has paid the maintenance fees for the first year. The Supplier will, whenever possible, invoice for such fees at least 30 days in advance.

7. GOODS AND SERVICES TAX

All goods and services tax (if any) payable in respect of the Software Maintenance provided by the Supplier under this agreement shall be payable by the Licensee.

8. LIAISON MEETINGS

Section deleted.

9. GENERAL

9.1 Notices

Any notice produced under this agreement shall be sufficient if in writing and delivered personally or sent by prepaid mail or facsimile transmission to the postal address or facsimile number of the party specified in the Schedule or any subsequently notified new address or number. Such notices shall be deemed to have been received upon personal delivery or sending of the facsimile transmission or two business days after posting.

9.2 Applicable law

This agreement shall be construed and interpreted in accordance with the laws of New Zealand.



9.3 No Assignment

9.3.1 The Licensee shall not transfer or assign or deal in any manner with the benefit or burden of this agreement without first obtaining the written consent of the Supplier, and any attempt to assign the rights, duties or obligations under this agreement without such consent shall be of no effect;

9.3.2 Any change or rearrangement in the beneficial ownership of the principal shareholding of the Licensee or its holding company, or any alteration in the Memorandum or Articles of Association of either of them altering the effective control of the Licensee shall be deemed a proposed assignment of this agreement and shall require the Supplier's prior written consent.

9.4 No Waiver

It is expressly understood that if either party, on any occasion, fails to perform any term of this Agreement, and the other party does not enforce that term, the failure to enforce on that occasion shall not prevent enforcement on any other occasion.

9.5 Support Liaison

The Licensee must nominate a maximum of two staff members to act as support liaison between the Supplier and the Licensee. Only these nominated staff members may request support from the Supplier. These names may be altered from time to time by written notice in order to reflect changes in staff.

9.6 No Employment

Each of the Supplier and the Licensee agree not to entice into employment any member of the other's staff, whether salaried or contracted, during the term of this agreement.



APPENDIX A - SUPPORT POLICY

1. Definition of Support

The software support contract includes the following:

- Software upgrades, including error corrections and enhancements, but excluding complete new modules.
- Hotline support, between 9am and 5pm, to provide a question and answer and advisory service.
- Subject to Licensee's compliance with paragraph 2(b) below, Carbon Copy (or similar) access; carbon copy is a remote dial-in support tool, which allows our support staff to operate the keyboard and view the screen at the user system. Download of programs is also possible via this link.
- The software support contract specifically excludes:
- Support of Hardware IN ANY FORM (eg printers, modems).
- Support of third party software packages (eg spreadsheets, word processors etc), or operating system (DOS and Novell).

These areas may be addressed by the Supplier, by arrangement, at our prevailing hourly rates.

2. Support prerequisites

- (a) Each client must nominate a maximum of two contact names who will act as support liaison between the Supplier and the client end-users. The representatives would ideally be formally trained by the Supplier, or otherwise acceptable to the Supplier as suitably qualified. Only support calls from the nominated representatives will be accepted.
- (b) Carbon copy (or such similar access) should be installed and operational at a fully supported site.
- (c) Support agreements will be reviewed annually. Renewal invoices will be sent one month before the support contract expires, and must be paid on or before the renewal date in order to ensure continuity of support.
- (d) Programming changes can only be made to the latest version of the software. There is no compulsion to upgrade immediately upon receipt of a new release; however, to resolve problems, the Supplier may require that the latest release is installed. The Supplier cannot attempt to duplicate problems occurring in earlier releases.

3. Support Level

- (a) The Supplier will endeavour to respond to any critical problem within 24 hours of notification, Monday to Friday (excluding public holidays).
- (b) The Supplier will endeavour to respond to any non critical problem within one week of notification.

4. Fee scale for Software Maintenance and additional services

The cost of the annual maintenance agreement is generally calculated as a percentage of the purchase price or replacement value of the Maintained Software currently in use. There is a minimum annual increase of the projected CPI rate for the ensuing year. Additional module purchases attract support fees on the same basis, pro-rated to next renewal date, as necessary.



The following services are available from the Supplier, but not included within the annual support fee retainer.

Disaster Planning
Remote Communications
Facilities Management
Computer Auditing
Personal Computers and peripheral Sales and Support
Unix, AOS/VS, VMS Support
Windows Software Development
Microsoft Application Sales, Support and Training
Control System Applications
Software Development

Quotations

In general, preparation of quotations is a chargeable exercise.

Training and installations

Travelling time, reasonable travel charges, and reasonable accommodation where applicable, must be borne by the Licensee. For international clients, no charge is made for travelling time.

5. Software upgrades

Upgrades will be despatched when available and according to support level.

It is in the Licensee's interest to take the latest version as often as it feels able to implement the same. In this way, problem correction time may be reduced, in the case where a later version must be installed in order to effect the correction.

