

1. Services

During the Initial Term and the Support Term, Microsis Ltd shall provide the following services in relation to the Software by telephone or email:

a) Error Correction.

Where the Software does not operate in accordance with the specifications published in the Documentation, Microsis Ltd shall work to diagnose and rectify all reproducible errors that materially affect the operation of the Software as follows:

- i. The Licensee shall notify Microsis Ltd of any such errors by email, with a written description of each claimed error and the conditions under which it occurred, and the associated trace file(s) produced by the Software;
- ii. Microsis Ltd shall work to correct all such errors that it can verify based on the Licensee information, and shall continue working either until it corrects the error, develops a workaround for that error, or determines in good faith that the error cannot be corrected as part of the then current releases of the Software (in which event Microsis Ltd shall attempt to correct or eliminate the error in the next release of the Software);
- iii. If Microsis Ltd discovers that the Software error is due to a documented or undocumented internal Oracle error or other error unrelated to the Software, Microsis Ltd has no further responsibility to correct the Software error.

b) Response Time.

Between the hours of 9.00am and 4.00pm Monday through Friday. Microsis Ltd shall use its reasonable endeavours to respond to the Licensee within 48 hours of a notice under clause 1(a)(i).

c) Maintenance Updates.

The Licensee will receive all standard Maintenance Updates released by Microsis Ltd for the Software during the Initial Term and the Support Term. The cost of these Maintenance Updates is included in the Support Fee.

d) Exclusions.

The Support Services shall not include the diagnosis and rectification of any fault resulting from:

- i. the use or operation of the Software not in accordance with the Documentation;

- ii. the merger of the Software (in whole or in part) with any other software except as permitted by the License Agreement;
- iii. the failure by the Licensee to implement recommendations in respect of or solutions to faults previously advised by Microsis Ltd;
- iv. any repair, adjustment, alteration or modification of the Software by any person other than Microsis Ltd without Microsis Ltd prior consent;
- v. the Licensee using a release of the Software which is not the latest release of the Software or is not the release which was issued prior to the latest release of the Software.
- vi. the use of the Software for a purpose for which it was not designed;
- vii. rectification of lost or corrupted data;
- viii. loss or damage caused directly or indirectly by operator error or omission;
- ix. loss, damage or faults caused directly or indirectly by any alteration, upgrade or new release of any software operating in conjunction or closely with the Software;
- x. System errors that are not reported
- xi. System internals errors;
- xii. System faults and bugs;
- xiii a fault in the equipment or in any other software operating in conjunction with or closely with the Software; or
- xiv. causes other than ordinary use.

e) Microsis Ltd may, at its complete discretion, upon request by the Licensee provide support services in the circumstances set out in clause 1 (d) above. If Microsis Ltd elects to do so, it shall be entitled to levy Additional Charges for those support services.

f) In addition to clause 1(e) above, Microsis Ltd shall be entitled to levy reasonable Additional Charges if support services are provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Licensee's request to have been outside the terms of the Support Services.

g) Additional Charges shall be agreed in writing/email by the Licensee and paid fully in advance.

2. Support Fee

2.1. Microsis Ltd shall provide the Support Services to the Licensee for the during the Term

2.2 The Support Fee invoiced in each year will be expressed as a percentage of the then applicable License Fee. On payment of each annual Support Fee, Microsis Ltd shall provide the Support Services to the Licensee during each year of the Support Term.

2.3. Microsis Ltd may increase the Support Fee each year of the Support Term provided that any such increase shall be notified in advance in writing

2.4. Unless otherwise stated, all amounts are exclusive of VAT which must be paid at the time of payment of each Invoice.

3. Term

The Support Services shall continue for a term of 12 months from the date of this document and thereafter each 12 month period in each year thereafter until termination in accordance with the provisions of clause 4 below.

4. Termination

4.1. The Support Services may be terminated:

- a) by either party giving the other not less than 30 days' written notice;
- b) forthwith by Microsis Ltd if the Licensee fails to pay any sum due hereunder within 28 days of a payment being due under an Invoice;
- c) forthwith by Microsis Ltd if the Licensee shall become Insolvent;

4.2. Any termination of the Support Services pursuant to this clause 4 shall be without prejudice to any other rights or remedies to which Microsis Ltd and the Licensee may be entitled hereunder or at law.

4.3. If the Licensee terminates the Support Services pursuant to clause 4.1 (a), Microsis Ltd shall not refund to the Licensee any Support Fees paid for the then current year of the Support Term.

4.4. If Microsis Ltd terminates the Support Services pursuant to clause 4.1 (b) or (c), Microsis Ltd shall not refund to the Licensee any Support Fees paid for the then current year of the Support Term.

4.5. If Microsis Ltd terminates the Support Services pursuant to clause 4.1(a) or if the Licensee terminates the Support Services pursuant to clause 4.1(c), Microsis Ltd shall

promptly refund to the Licensee the unused portion of the Support Fees paid for the then current year of the Support Term.

4.6. The termination of the Support Services does not affect the License Agreement. However, if the License Agreement is terminated for any reason then the Support Services will automatically terminate and no refund of any unused portion of the Support Fees paid for the then current year will be paid.

5. Renewal and Reinstatement

5.1. Upon expiry of the Initial Term, a Support Term will automatically begin for a 1 year term. Upon expiration of each annual Support Term, a new Support Term will automatically begin for successive 1 year periods.

5.2. Microsis Ltd shall invoice the Licensee at the beginning of each Support Term for the upcoming year of that Support Term.

5.3. If the Support Services are terminated or expire for any reason, the Support Services may be reinstated on payment of a fee equal to the annual Support Fees that would have been payable had the Support Services not been terminated or expired.

6. Warranty

6.1. Subject to the exceptions set out in clause 1(d) and the limitations detailed in clause 7 below, Microsis Ltd warrants that it will perform the Support Services with reasonable care and skill in accordance with generally acceptable industry practices using personal reasonably trained and experienced in the Software.

6.2. Subject to the clause 6.1, all warranties, express or implied statutory or otherwise in respect of the provision of the Support Services are hereby excluded to the fullest extent permitted by law.

7. Liability

7.1. Microsis Ltd shall not be liable for any loss or damage sustained or incurred by the Licensee or any third party (including, without limitation, any loss of use of the latest New Release or loss of or spoiling of the Licensee's data) resulting from any defect or error in the latest New Release except to the extent that such loss or 4 damage arises from any unreasonable delay by Microsis Ltd in providing the Support Services and then only to the extent not excluded by these terms.

7.2. Microsis Ltd shall not be responsible for the maintenance, accuracy or good running of any version of the Software except the latest New Release and the release prior to the latest New Release.

7.3. The aggregate cumulative liability of Microsis Ltd arising out of these terms is limited to an amount not exceeding the total Support Fee for the Support Services paid by the Licensee for the year in which the liability arises.

7.4. Microsis Ltd shall not be liable to the Licensee for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of warranty, contract or otherwise.

7.5. Microsis Ltd shall not be liable to the Licensee for any loss arising out of a failure by the Licensee to keep full and up to date security copies of the Software and data it uses in accordance with best computing practice.

8. Force Majeure

8.1. Neither Microsis Ltd nor the Licensee shall be liable for any breach of these terms to extent that that breach was caused by a Force Majeure event.

8.2. Each of Microsis Ltd and the Licensee agree to give notice forthwith to the other upon becoming aware of a Force Majeure event such notice to contain details of the circumstances giving rise to the Force Majeure event.

8.3. If a default due to a Force Majeure event shall continue for more than 13 weeks then the party not in default shall be entitled to terminate these terms. Neither Microsis Ltd nor the Licensee shall have any liability to the other in respect of such termination as a result of a Force Majeure event.

9. Waiver

The waiver by either Microsis Ltd or the Licensee of a breach or default of any of these terms by the other shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Microsis Ltd or the Licensee to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other.

10. Notices

Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class post or by email or facsimile (in all cases to be confirmed by letter posted within 12 hours) to the address of the other set out or referred to in the License Agreement (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served and deemed to have been received (if delivered) at the time of delivery (if sent by post) upon the expiration of 72 hours after posting and (if sent by email or facsimile) upon the expiration of 12 hours after dispatch.

11. Severability

If any provision of these terms shall be found by any court to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of these terms and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

12. Entire Agreement

Microsis Ltd shall not be liable to the Licensee for loss arising from or in connection with any representations, agreements, statements or undertakings in relation to the Support Services made prior to the date of execution of the License Agreement.

13. Other Matters

13.1. These terms shall be bind and inure for the benefit of the successors in title of Microsis Ltd and the Licensee.

13.2. The Licensee shall not be entitled to assign these terms nor any of its rights or obligations hereunder. Microsis Ltd may assign its rights and obligations under these terms at any time by notice to the Licensee.

13.3. Microsis Ltd may change these terms from time to time by giving the Licensee 14 days' notice. Microsis Ltd will give notice to the Licensee of any change in accordance with clause 10 or by providing relevant information on the Microsis Ltd website.

13.4. These Terms shall be governed by and construed in accordance with the Laws of England and Wales and the Licensee agree to submit to the exclusive jurisdiction of the New Zealand courts.

14. Definitions

"Microsis Ltd " means Microsis Ltd 2 Countrymans Way, East Goscote

"Additional Charges" means charges in addition to the Support Fee as described in clause 1(e) and (f) as notified by Microsis Ltd to the Customer from time to time;

"Documentation" means the Agreement and the Installation Guide and User Manual included with the Software;

"Effective Date" means the date on which the License Agreement is accepted by the Licensee;

"Emergency" means an emergency due to an actual or potential occurrence (such as fire, flood, storm, earthquake, explosion, accident, epidemic or war like action) which endangers or threatens to endanger the safety or health of persons, or destroys or damages or threatens to destroy or damage, property;

“Force Majeure” means any cause which is not reasonably within the control of the party affected including industrial disputes of any kind, Emergencies, governmental restraint, expropriation or prohibition, inability or delay in granting or obtaining governmental approvals, consents, permits, licenses or authorities but does not include a delay resulting from an inability to obtain financing;

"Licensee" means a person or company who is licensed to use the Software by Microsis Ltd and has accepted the License Agreement;

“Term” means 30 days from the Effective Date;

“Invoice” means the document issued by Microsis Ltd detailing the items, quantity and agreed prices for the Software and Support Services;

“Insolvent” means being insolvent (as defined in the Insolvency Act 1967) or having a controller appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction;

“License Agreement” means the license agreement recording the terms on which the Software is licensed to the Licensee;

“License Fee” means the fee payable by the Licensee under the License Agreement;

"Maintenance Update" means any corrected version of the Software from time to time issued by Microsis Ltd but does not include new versions or upgrades of any Software for which Microsis Ltd generally charges an additional fee (for example any new modules or products Microsis Ltd releases that are commercially sold separately);

"New Release" means any improved or modified version of the Software from time to time issued by Microsis Ltd;

"Support Fee" means the charges for the Support Services from time to time as described in clause 2;

"Support Services" means, subject to the exclusions in clause 1(d), the services described in clause 1 (a), (b) and (c);

“Support Term” means a period of 1 year from the expiry of the Initial Term together with each subsequent 1 year term (if any);

“Software” means the software (including bespoke software developed by Microsis for the Customer).

Acceptance - Must be filled in and sent back to Microsis Ltd

Company Name: _____

Client Name: _____ (print)

Department Position: _____

Date: _____

Signature: _____