DATAFLOW
Financial Software Solutions

Software Support Agreement

Contents

DATAFLOW (UK) LIMITED SOFTWARE SUPPORT AGREEMENT

TERMS AND CONDITIONS OF AGREEMENT

INTRODUCTION

With effect from the *DATE* all arrangements or agreements between Dataflow (UK) Ltd and Customer for the provision of the Support Service shall be made on the terms set out in this agreement except as indicated herein. This agreement replaces all previous arrangements, agreements or undertakings between Dataflow (UK) Ltd and Customer for the provision of the Support Service.

The context of this agreement is that Dataflow will provide a Software Support Service to the Customer according to the following terms and conditions, provided that:

a)   The Customer has purchased *dataflow* from Dataflow or from a Dataflow accredited Reseller and:

b)   The Customer has a valid and current Dataflow Software Agreement to use the software configuration installed on the Customer's premises.

1   **DEFINITIONS**
   1.1. In this agreement, except where inconsistent with the context, the following words and phrases shall have the following meanings:

"Application"	The attached Support Application Form appendix 1
"Customer"	The individual, partnership or other legal entity to whom Dataflow grants a license to use the Products and/or who is actively supported by Dataflow.
"Dataflow"	Dataflow (UK) Limited, Burma House, Station Path, Staines, Middlesex, TW18 4LA United Kingdom.
"Documentation"	The manuals together with all written documentation provided with the Products
"Effective Date"	The date of acceptance of this contract by Dataflow identified on Application
"Hardware"	Fileservers, workstations and network equipment
"Malfunction"	A proven error in a mathematical calculation within the Products or an error which causes the Products to fail to operate substantially or fail to provide any facility or function in accordance with the documentation supplied by Dataflow in connection with such Products

"Member(s)"	The personnel to whom the Service is to be made available
"Products"	Any or all of the Dataflow products
"Reseller"	The company or person expressly authorised to offer the Customer the opportunity to apply to enter into this contract with Dataflow
"Service"	The telephone software advice and assistance service to be provided to the Customer by Dataflow on the terms set out hereunder
"Software"	Any software of which Dataflow are the authors
"Supported Environment"	The operating environments for which Products will be made available by Dataflow pursuant to this agreement from time to time a current list of which is available on request
"Working Day"	9.00am to 5.00pm on any Monday to Friday excluding Bank and Public Holidays
"Working Hour"	Any full hour during a Working Day

2 THE SERVICES

2.1 In consideration of the Customer returning the Application and Agreement completed together with a cheque made payable to "Dataflow (UK) Ltd" for the price specified in Dataflow's Price List in force at the date of the Application Dataflow agrees to provide the Customer with the Service subject to the terms set out herein, if the application of the Customer is accepted.

2.2 If the Customer's application is not accepted, Dataflow will return the cheque sent by the Customer or the equivalent amount.

2.3 The Customer acknowledges that the Service is not intended to be used as a replacement for training although it is not a condition precedent of this Agreement that the Member(s) should attend a training course.

2.4 The Customer acknowledges that the Service is not intended to be used as a replacement for the instruction manuals and help text supplied with the Software and that it is a condition precedent of this Agreement that the Members should ensure that they are familiar with the contents of said manuals and help text and that they refer to said manuals and help text as their first course of action wherever a problem relating to the Software arises.

2.5 The Service shall cover telephone advice and assistance to be provided to the Member(s) in the operation and use of the Software. More detailed queries on the use of the system will require training which will be chargeable at the rate in force at the time.

2.6 Dataflow may, at its discretion, agree to attend the Customer's site at a mutually convenient time in order to provide assistance, upon the Customer's agreement to pay Dataflow's hourly fees then in force and any expenses incurred.

2.7 The Service shall only extend to standard operational uses of the Software. If a Member requires any advice with respect to any unusual or novel use of the Software, Dataflow may offer such advice at its discretion.

2.8 The Service shall not extend to technical assistance in the design and implementation of modifications or additions to the Software but will endeavour to address basic technical support queries.

2.9 The Service shall only cover Software written by Dataflow. Where modifications or additions to the Software have been made by any party other than Dataflow, the Service will be deemed to have been provided in full upon identification of such modifications or additions as being the cause of the Customer's problem.

2.9.1   If the Customer shall discover a Malfunction, then the Customer shall within 14 days after such discovery notify Dataflow in writing of the defect or error in question and provide Dataflow (so far as the Customer is able) with a documented example of such defect or error. Should a site visit be deemed necessary by Dataflow, this will be provided free of charge as part of this agreement, unless it is proved that the malfunction was caused by other third party software/hardware.

2.9.2   If the Customer requests support in an emergency Dataflow shall use all reasonable efforts to fulfil the request as quickly as possible. The table below indicates the response and resolution times agreed between the parties.

Nature of problem	Examples (this list is indicative and not exhaustive	Support levels normally considered reasonable		
		Initial response time	Status updates	Targeted best endeavour resolution
Critical a problem which critically impacts the Customer's ability to do business	• entire system is down • large numbers of users (one-third of users or more) are unable to work	4 working hours	Daily	1 working day
Major a problem which substantially impacts a primary area of the business	• a small number of users (fewer than one-third of users) severely impaired or unable to work • large number of users (one-third of users or more) productivity impaired	8 working hours	Weekly	2 working days
Significant a problem which impacts a primary area of the Member's business	• a small number of users (fewer than one-third of users) productivity impaired	8 working hours	Weekly	5 working days
Minimal a problem that both parties agree is minimal, having limited impact on the Member's business	• a small number of users (fewer than one-third of users) minor inconvenience	24 working hours	as agreed between both parties	as agreed between both parties

2.9.3   Forthwith upon such correction being completed Dataflow shall deliver to the Customer the corrected version of the Software in machine-readable form for loading on to the Supported Environment together with appropriate amendments to the Documentation

specifying the nature of the correction and providing instructions for the proper use of the corrected version of the Software.

2.9.4   Dataflow shall as soon as reasonably practicable after such delivery provide for the Customer's staff such additional assistance as shall be necessary to enable the Customer to make proper use of the corrected version of the Software. Dataflow shall in addition provide the Customer with all the other assistance reasonably required by the Customer to enable the Customer to implement the use of the corrected version of the Software.

2.9.5   The foregoing error correction service shall not include service in respect of:

(a)   defects or errors resulting from any modification of the Software made by any person other than Dataflow;

(b)   incorrect use of the Software or operator error;

(c)   any fault in the Operating Environment or in any other programs used by the Customer in conjunction with the Software.

2.9.6   Dataflow shall make an additional charge in accordance with its standard scale of charges from time to time in force for any services provided by it:

(a) At the request of the Customer but which do not qualify under the aforesaid error correction service by virtue of any of the exclusions referred to in sub-clause 2.9.5 above.

For the avoidance of doubt nothing in this sub-clause shall impose any obligation on Dataflow to provide services in respect of any of the exclusions referred to in sub-clause 2.9.5 above.

2.10   If data corruption arises which is not due to clause 2.9 and the system cannot be restored Dataflow will charge to investigate the problem and endeavour to write and test a fix at the hourly fees then in force.

2.11   Any requested program changes will be subject to be charged at the rate in force at the time.

2.12   Dataflow shall not be entitled to assign, transfer or delegate its obligations hereunder to any third party without the Customer's prior written consent. In the event that Dataflow assigns, transfers or delegates its obligations to any third party, Dataflow shall remain liable for and shall indemnify the Customer in respect of all actions and omissions of such third party.

3   **DURATION**

3.1   This agreement shall come into force on the date hereof and shall continue for a term of one year certain and thereafter subject to the payment to Dataflow of a further fee for each further year (which fee shall be paid within fourteen days of the date of Dataflow's invoice to the Customer) unless either party gives the other no less than three months notice in writing before the end of the then current year that the Agreement shall be terminated. Dataflow shall be entitled at any time and from time to time, after the expiry of one year after the Effective Date, to increase charges by giving the Customer at least 30 days' prior written notice.

3.2   If the Customer does not give Dataflow the requisite notice to terminate as provided in (a) above, the Customer shall be deemed to have accepted any increase in the fee or variations in terms notified to the Customer pursuant to 3.1 or 3.2 above.

4   **AVAILABILITY OF SERVICE**

4.1   The Service shall be made available during the Working Days.

4.2   Except in the case of a Malfunction where the Service shall be made in accordance with the timescales in clause 2.9, Dataflow will acknowledge the Member's request for assistance and advice within four (4) Working hours of Dataflow receiving telephone notification of his/her request for this Service. After this initial acknowledgement Dataflow may require further time to consider the Member's problem. However Dataflow will use all reasonable endeavours to resolve standard problems within eight (8) Working Hours after the initial acknowledgement.

4.3   The Customer acknowledges that all telephone calls relating to the Service to the Member(s) shall be at the expense of the Customer.

4.4   Dataflow will use all reasonable endeavours to resolve the Member's problem but does not guarantee or warrant that it will be able to do so. Dataflow strongly advise that the Customer ensures that adequate backup copies of all data relating to the Software are regularly made to the Customer's satisfaction as Dataflow may be unable to provide a full Service where no such backups are available.

5 LIMITATIONS OF LIABILITY

5.1 The Customer agrees that save as expressly provided herein, all conditions or warranties, whether express or implied, statutory or otherwise, relating to the provision of the Service or any aspect thereof are hereby expressly excluded.

5.2 Dataflow shall not be liable either in contract, tort or otherwise, except as expressly provided in this agreement, for any loss or damage of whatsoever kind suffered by the Customer in consequence of any act or omission on the part of Dataflow or any employee thereof with respect to the provision of the Service, unless such exclusion is, in any particular case, unreasonable under the terms of the Unfair Contract Terms Act 1977.

5.3 If due performance of the Agreement by Dataflow is affected in whole or in part by reason of any event or occurrence beyond the reasonable control of Dataflow, Dataflow shall be under no liability for any loss, damage, injury or expense, whether direct, indirect or consequential, suffered by the Customer due to the defective or delayed performance.

5.4 The Customer acknowledges and accepts that it is reasonable as defined by the Unfair Contract Terms Act 1977 that Dataflow shall in no circumstances whatsoever be responsible or liable if:

    5.4.1 The Customer and/or the Member does not follow the advice and instruction of Dataflow properly.

    5.4.2 The Customer and/or the Member does not provide Dataflow with accurate information whether in response to Dataflow's questions or otherwise so that Dataflow is unable to provide proper advice and assistance.

    5.4.3 The Customer and/or the Member does not comply with the instructions in such instruction manual or manuals and help text as may be provided with the Software unless such instructions are inconsistent with the advice offered by Dataflow.

    5.4.4 The Customer and/or the Member has in any way interfered with, modified or altered the Software other than in accordance with the directions of Dataflow , the manufacturer or any other party authorised and qualified to advise thereon

    5.4.5 The Hardware and/or operating system software has not been properly installed or configured, or is inherently defective or faulty.

5.5 The Customer acknowledges and accepts that the extent of the Resellers agency in respect of this agreement is strictly limited to offering the Customer the opportunity to apply to enter this Agreement with Dataflow and that Dataflow shall in no way be liable for any representation, warranty or statement made by the Reseller which is inconsistent with or extends the representations or warranties expressly contained herein and the Customer further acknowledges that, unless such representations or warranties are made with the express written consent of Dataflow, they shall in no way be binding on Dataflow nor shall Dataflow be liable

whether in contract, tort or otherwise for any such statement.

5.6 The Customer acknowledges and accepts that Dataflow shall in no way be responsible or liable if the provision of the Service in any way affects or deprives the Customer of all or any of the benefits of any other warranties, support or other agreements that the Customer might have with respect to the Software or if the Customer's entering into this Agreement results in his/her being in breach of any other agreement in respect of the Software.

5.7 Notwithstanding anything above provided the total liability of Dataflow under or by virtue of or in any way relating to this Agreement, whether in respect of a single occurrence or a series of occurrences, and whether in contract, tort or otherwise, shall under no circumstances exceed the fee paid.

6   USE OF THE SERVICE

6.1 The Customer will use the information and advice provided by Dataflow for the Customer's own internal business or private purposes only and shall in no circumstances use the information provided by Dataflow to either directly or indirectly make a profit by providing third parties with such information. The Customer will use all reasonable endeavours to ensure that the Member(s) do not act in such a manner.

6.2 In the event of the Customer or Member using the information and advice otherwise than is provided in sub-clause (6.1) above without prejudice to any other remedies Dataflow may have, the Customer shall indemnify and keep indemnified Dataflow in respect of loss of business or other economic loss, Dataflow may suffer consequence.

7   TERMINATION

Notwithstanding anything else contained herein, this Agreement may be terminated:

7.1 by either party forthwith on giving notice in writing to the other if the other commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 90 days after the receipt of a request in writing from the other party so to do, to remedy the breach; or

7.2 by either party forthwith on giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors.

8   MISCELLANEOUS

8.1   Neither party may assign, transfer or part with possession of any of his/her/its rights or duties under this Agreement except with the prior written consent of the other.

8.2   The failure of either party at any time to enforce any provision of this Agreement shall in no way affect its right thereafter to require complete performance by the other party. Any waiver of this Agreement must be in writing to be effective.

8.3   All notices shall be sent by pre-paid first-class post or delivered by hand addressed to the intended recipient at the addresses shown on the Application for the Customer and for Dataflow or at such new address of which either party may notify the other in writing. Such notice if sent by post shall be deemed served on the Working Day after posting.

8.4   All the terms of this Agreement are set out herein and embody the entire understanding between the parties. This Agreement supersedes any prior promise, representations, undertakings or implications whether made orally or in writing. These conditions may only be modified by written agreement between the parties.

9   INTELLECTUAL PROPERTY RIGHTS

9.1   All intellectual property rights, including copyright and knowhow and all designs, specifications and other technical information however disclosed by Dataflow to the Customer under this agreement are vested and shall remain vested in Dataflow, or third parties who have granted Dataflow the right, expressly or implied, to enter into this agreement.

10   STAFF

10.1   Neither party shall approach any employee of the other, who has been employed within the previous six months with a view to offering them employment or consultancy work without the express written approval of a director of the other party. Furthermore, should any such person approach either party, the other party shall, subject to any overriding obligations of confidentiality, inform a director of the other party as soon as practical if it is intended to offer employment to such person.

11   PROPER LAW

11.1   This Agreement and all matters arising out of or relating to this Agreement, shall be governed and construed in accordance with the laws of England.

12   SEVERABILITY

12.1 If any portion of this Agreement shall be declared void or unenforceable by any court or administrative body of competent jurisdiction such portion shall be deemed severable from the remainder of this Agreement which shall continue in all other respects valid and enforceable.

13 **DATA PROTECTION**

13.1 Dataflow will establish and maintain such security measures and procedures as are reasonably practicable and which comply with the Data Protection Act 1998 to provide for the safe custody of the Customer's information and data in its possession and to prevent unauthorised access thereto or use thereof;

13.2 Dataflow shall comply with its obligations under the Data Protection Act 1998 ("the Act") and with all directions of the Customer in respect of its use, storage and disclosure of all personal data (as defined by the Act) received by it from the Customer. Dataflow acknowledges that such data is the sole property of the Customer and shall destroy all its copies of such data forthwith upon the Customer's request.

14 **LIAISON WITH THIRD PARTIES**

14.1 Dataflow acknowledges that Software may be linked by the Customer to third party software. Dataflow undertakes that it shall use all reasonable endeavours to resolve any issues or errors arising concerning any linkage between Dataflow products and third party products and shall attend meetings with third parties and liaise directly with such parties as and when required by the Customer to facilitate such resolution. The cost of attendance at such meetings and work carried out on resolution of such issues shall be at Dataflow's standard scale of charges from time to time in force except where the defects or errors constitute a Malfunction in which event clause 2.1 shall apply