

# **Eurolink Software Support Agreement**

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**Eurolink Management Software Support Agreement**

This Agreement is made on the date specified in the First Schedule between EUROLINK TECHNOLOGY LTD of The Manor Farm, 124 Manor Road North, Thames Ditton, Surrey, KT7 0BH (ETL) of the first part and THE CUSTOMER.

WHEREAS:-

The Customer operates Eurolink Software which may require periodic maintenance, management and updating and

The Customer's staff may require periodic assistance and training on the Software, including updates and modifications thereto

NOW IT IS HEREBY AGREED as follows:-

**1.0 DEFINITIONS**

- 1.1 "ETL" means Eurolink Technology Limited and its personal representatives, successors and permitted assigns;
- 1.2 "Eurolink Software" means the computer programs developed by ETL and supplied to The Customer and shall include (where the context requires or permits) Approved Version Upgrades issued to The Customer;
- 1.3 "System Supervisor(s)" means a person designated by The Customer as being responsible for overseeing the operation of the Eurolink Software;
- 1.4 "Premises" means the building or buildings where the Software is located;
- 1.5 "System Software" means the Operating System licensed for use on a computer processor.
- 1.6 "Third Party Software" means any computer programs supplied by ETL not comprised within the Software or the System Software.
- 1.7 "Software" means the Eurolink Software and the Third Party Software;
- 1.8 "Data" means the information stored by the Software.
- 1.8 "Approved Version Upgrades" means those amendments and additions in object code form to the Eurolink Software as shall be made available to The Customer under this contract for the purpose of improving or extending the Eurolink Software;
- 1.9 "Normal Working Hours" means the hours of 8.30am to 6.00pm Monday to Friday, excluding Bank and statutory holidays, or any extended hours as may be agreed by ETL from time to time.

## **2.0 COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall commence upon installation of the Eurolink Software and shall endure for a minimum period of one year. Thereafter it may be terminated by at least six months written notice by either party.
- 2.2 During the term of this Agreement, ETL shall provide The Customer with unlimited access to [www.eurolinksupport.co.uk](http://www.eurolinksupport.co.uk), telephone help-line during Normal Working Hours, remote access support during Normal Working Hours and Approved Version Upgrades.

## **3.0 REPORTING OF PROBLEMS**

- 3.1 Requests for assistance shall be made by telephoning the number designated for the purpose or by sending an email to [support@eurolinksupport.co.uk](mailto:support@eurolinksupport.co.uk) or by sending a Support Request by facsimile transmission or first class post.
- 3.2 The ETL representative receiving the support request will determine the appropriate action to be taken and at his or her discretion will deal with the problem personally or, during Normal Working Hours, pass the problem on to a software programmer. In any case the ETL representative will, subject to the other terms of this Agreement, be responsible for ensuring that the problem has been satisfactorily resolved as soon as reasonably practicable.
- 3.3 The designated telephone number will be available during Normal Working Hours EXCEPT THAT with a minimum of one weeks notice, ETL reserves the right to withdraw service on up to two non-consecutive days in any calendar year for the purposes of staff training.
- 3.4 The Customer agrees to maintain on its staff at least ONE person trained as System Supervisor(s) and to ensure that the System Supervisor(s) has a good working knowledge of the Eurolink Software.
- 3.5 The Customer shall ensure that all problems which occur with the Eurolink Software are promptly notified to ETL.
- 3.6 The Customer shall provide ETL with full and safe access to any relevant Premises and place of use at such Premises for the purposes of this Agreement.

## **4.0 SOFTWARE**

- 4.1 The software covered by this Agreement is the Eurolink Software
- 4.2 The level of assistance available on the Eurolink Software is specified in Clause 2.2 and The Customer accepts that ETL cannot undertake any support other than specified in Clause 2.2. If The Customer requires service on Third Party Software then ETL will use its best endeavours to assist The Customer in making separate arrangements with the authors of such software.
- 4.3 The Customer agrees to install a suitable software program for the purposes of

taking security back-up copies of the Software and Data. The Customer agrees that it is the responsibility of the System Supervisor(s) to ensure that reliable back-ups of the Software and Data are taken. The Customer agrees to accept full liability for delays, loss of data or interruption to business arising out of any failure to implement any such back-up procedure.

- 4.4 In order to facilitate the timely diagnosis and correction of problems, The Customer agrees to install a remote access facility of the type prescribed by ETL. The Customer further agrees to facilitate any request of the ETL staff for such a remote access facility to be brought into operation.
- 4.5 On occasions it may be necessary for ETL staff to require that the Eurolink Software be reserved for their exclusive use. The Customer agrees to facilitate such use or, as an alternative agrees to forego service under this Agreement until such exclusive use can be made available. ETL reserves the right to raise additional charges for excess work incurred in correcting errors or omissions directly resulting from the failure of The Customer to make exclusive use of the Eurolink Software available to ETL staff, or for work carried on outside Normal Working Hours as a direct result of such failure.
- 4.6 Certain work is not covered by this Agreement and will be charged for at the rates for the time being in force. This work includes:-
- 4.6.1 Installation of new software packages;
- 4.6.2 Maintenance of software not supplied by ETL or software.
- 4.6.3 Repair of faults caused by operation of the Software other than in Accordance with any documentation or manuals supplied with the Software or otherwise caused by the neglect or fault of The Customer or any third party.
- 4.6.4 Repair of faults arising from the failure of the System Supervisor(s) to act on the reports produced by the programs specified in Clause 4.3 including, but not limited to, the restoration or correction of Data;
- 4.6.5 Any service relating to the Eurolink Software in respect of which The Customer shall have not performed its obligations in connection with any Approved Version Upgrades pursuant to Clause 5.2 below.

## **5.0 SOFTWARE UPGRADES**

- 5.1 From time to time, ETL may at its sole discretion issue Approved Version Upgrades. The copyright and all other intellectual property rights of whatever nature in any Approved Version Upgrades shall be and shall remain vested in ETL. The Customer shall be deemed to be licensed to use the Eurolink Software after the incorporation of the Approved Version Upgrades to the same extent as it was licensed to use the Eurolink Software prior to the incorporation of the

Approved Version Upgrades.

- 5.2 ETL will make available Approved Version Upgrades at the ETL support website [www.eurolinksupport.co.uk](http://www.eurolinksupport.co.uk), together with instructions on their installation. The Customer agrees to install such Approved Version Upgrades as and when these are issued in order that the Eurolink Software may be maintained efficiently.
- 5.3 Whilst Approved Version Upgrades will normally be capable of being installed by a System Supervisor(s), The Customer may request some releases be installed by ETL staff. In such cases ETL reserves the right to charge at its current rates in force at the time for such installation.
- 5.4 Suppliers of System Software and Third Party Software may also make upgrades available from time to time. The Customer accepts that these may be made necessary by Approved Version Upgrades and agrees to install such upgrades as may be necessary at the prevailing cost.
- 5.5 The Customer accepts that some Approved Version Upgrades may require the purchase of additional Computer Hardware and/or Third Party Software at the prevailing cost to The Customer. If The Customer is unable or chooses not to incorporate such additions The Customer accepts that ETL may be unable to perform its obligations under this Agreement and may therefore terminate this Agreement immediately by giving written notice to The Customer.
- 5.6 If The Customer shall require any specific modifications or additional programs not generally offered to users of Eurolink Software then these may be provided at the sole discretion of ETL. ETL will issue to The Customer a quotation for the work required, upon completion of a satisfactory specification of requirements, on the understanding that unless or until the said requirements become incorporated into a subsequent Approved Version Upgrade, an additional charge will be raised for the work required in amending the new programs at the time of each and every subsequent Approved Version Upgrade, such charge to be advised in advance of the new release.

## **6.0 TRAINING AND CONSULTANCY**

- 6.1 ETL will provide training and consultancy at the request of The Customer subject to the availability of appropriate staff. ETL will charge for such training and consultancy at its current rates in force from time to time.
- 6.2 The Customer accepts that a certain level of competence is essential for the satisfactory operation of the Software and agrees to undertake that the System Supervisor(s) have a good working knowledge of the Software and System Software through suitable training and/or consultancy. ETL shall give advice on such suitable training and/or consultancy if requested.

## **7.0 CHARGES**

- 7.1 The charges under this Agreement are based upon the Eurolink Software. ETL reserves the right to alter these charges by giving not less than three months notice in writing. Notwithstanding any other remedy which may be available to it under this Agreement, ETL reserves the right to increase such charges annually by 5% or the rate of inflation, whichever is the higher.
- 7.2 The charges are payable upon receipt of a VAT invoice.
- 7.3 Any additional charges which may accrue under this Agreement shall be invoiced at the time and shall be due for payment immediately.
- 7.4 Any charges under this Agreement are exclusive of Value Added Tax which shall be paid by The Customer at the rate and in the manner for the time being prescribed by law.
- 7.5 If the payment due for any period shall have not been received within 28 days of the due date the ETL shall forthwith withdraw the services specified within this Agreement until such payment has been received. In all such cases, and in the event of late payment of any other sum due under this Agreement, ETL shall apply an interest rate of two percent for each month or part of a month that the sum or sums remain unpaid.

## **8.0 REMOTE ACCESS CONNECTION**

- 8.1 Where a suitable remote access connection is to be installed in respect of the services offered in Clause 4.4 above The Customer shall be responsible for all actions and charges relating to the remote access connection.

## **9.0 CONFIDENTIALITY**

- 9.1 Each party shall keep confidential any information obtained from the other in connection with this Agreement and shall not divulge the same to any third party without the consent of the other in writing. Each party agrees to inform its staff of the existence and relevance of this Clause. The provisions of this Clause shall not apply to any information in the public domain (otherwise than by breach of this Clause) or to information obtained from a third party who is free to divulge the same.

## **10.0 TERMINATION**

- 10.1 Either party shall have the right to terminate this Agreement forthwith if the other party is in fundamental breach of these conditions including, but not limited to, non-payment of charges and fails to remedy such a breach within thirty days of receipt of notification thereof in writing. Such termination shall be without prejudice to any rights which shall have accrued to either party under this Agreement and shall not affect the responsibilities of the parties under Clause 9.1 above.

- 10.2 If the Agreement be terminated under this Clause, The Customer shall pay to ETL all costs and expenses including legal and other fees incurred and all other arrears of charges or other payments arising in respect of this Agreement and ETL shall have the right to recover forthwith any goods loaned to The Customer and The Customer shall thereafter pay for any services required of ETL at the non-contract rates in force at the time.

## **11.0 LIABILITY**

- 11.1 The following provisions set out the entire liability of ETL (including any liability for the acts and omissions of its employees, agents or sub-contractors) to The Customer in respect of any breach of its contractual obligations arising under this Agreement or any tortious act or omission including negligence arising under or in connection with the Agreement AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THESE PROVISIONS.
- 11.2 The liability of ETL to The Customer for death or injury resulting from its own negligence or that of its employees, agents or sub-contractors shall not be limited.
- 11.3 Subject to the provisions of Clause 11.2 above, the entire liability of ETL shall be limited to an amount not exceeding one years charges under this Agreement at the rate in force at the time of any incident giving rise to a claim. The Customer is strongly advised to effect insurance for the increased costs of working which may result in failure of the Software.
- 11.4 Notwithstanding anything else contained in this Agreement, no liability shall attach to ETL for any direct or indirect consequential loss, damage or injury including loss of use, profits, contracts or business revenue.

## **12.0 ENTIRE AGREEMENT**

- 12.1 These terms together with any addendums hereto represent the entire Agreement between The Customer and ETL and shall supersede any previous representations or Agreements written or oral, which may have existed between the parties.

## **13.0 BANKRUPTCY**

- 13.1 Either party shall have the right to terminate the Agreement forthwith if the other party shall become bankrupt or make any arrangement with its creditors or go into liquidation.

## **14.0 FORCE MAJEURE**

- 14.1 Neither party shall be liable for any delay in performing its obligations under this Agreement if such delay results from circumstances beyond that party's reasonable control.

**15.0 ARBITRATION**

15.1 Any dispute or difference arising between The Customer and ETL in connection with or arising out of this Agreement shall be referred to a single arbitrator to be agreed between the parties or, failing such agreement, to be nominated by the President for the time being of the British Computer Society on the application of either party and any such reference shall be deemed to be a submission for arbitration within the meaning of the Arbitration Act 1950 or any statutory re-enactment or amendment thereof for the time being in force.

**16.0 SEVERABILITY**

16.1 In the event that any of the Terms and Conditions of this Agreement shall be deemed invalid, unlawful or unenforceable to any extent, such Term or Condition shall be severed from the body of this Agreement and the remainder thereof shall continue to be valid and enforceable to the fullest extent permitted by law.

**17.0 ASSIGNMENT**

17.1 ETL shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under this Agreement through any associated company of it or through any agents or sub-contractors appointed by it in its absolute discretion for the purpose and any act or omission of any such associated company or agent or sub-contractor shall, for the purpose of this Agreement, be deemed to be the act or omission of ETL.

17.2 Except as provided in Clause 17.1 above, this Agreement is personal to the parties and neither of them may, without the written consent of the other, assign or otherwise dispose of any of its rights or assign or otherwise delegate any of its obligations under this Agreement.

**18.0 WAIVER**

18.1 All notices required to be given under this Agreement shall be in writing and sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate by notice in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class pre-paid letter, or facsimile transmission or by email (addressed, if ETL is the recipient, To The Managing Director) and shall be deemed to have been received if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission or email, 12 hours after dispatch.

**19.0 LAW**

19.1 Unless otherwise agreed in writing, this Agreement shall be construed and interpreted in accordance with the laws of England.