

ABACO SYSTEMS

Software License Agreement - Maintenance Support

1 **Definitions**

- 1.1 "Abaco" shall mean the Abaco Systems business providing the maintenance support as detailed herein to Customer pursuant to this Agreement for Licensed Product, whether Abaco Systems, Inc. or its subsidiary.
- 1.2 "Licensed Product" shall be as identified in the Abaco order acknowledgement and shall consist of the licensed Abaco software packages and associated documentation as delivered to the Customer under separate licence terms, and whose product codes/descriptions are confirmed via the Registration procedure (see section 12).
- 1.3 "Upissued Products" shall mean newer versions of the Licensed Product, available to the Customer under the terms of this Agreement as a replacement to the original Licensed Product, and generally providing either enhanced functionality and/or various fixes to reported problems.
- 1.4 "Service Pack(s)" shall mean fixes to specific functions within the Licensed Product, available to the Customer under the terms of this Agreement, generally each provided as an individual piece of source or object code to be compiled or incorporated into the Licensed Product already with the Customer, as per the instructions also provided. The fixes may be (i) permanent, in that substantially the same fix may appear in later Upissued Products, to which the Service Pack(s) then do not need to be applied to obtain the fix, or (ii) temporary, in that a more consistent, improved or completely different fix may appear for the same problem in later Upissued Products, or even (iii) custom, in that the alteration of the provided Service Pack(s) would not appear in later Upissued Products.
- 1.5 "Source Materials" shall mean any source code and/or related items (e.g. build scripts etc.) whatsoever within the Licensed Products, plus any documentation specific to such source items (e.g. explanations of source function/arrangement, build instructions, etc). Object code, plus any documentation relating to the normal use or function of the object code, is excluded from the Source Materials within Licensed Product.

2 **Services** With respect to the Licensed Product as defined herein, Abaco will provide the Customer with the following services during the applicable period.

2.1 Telephone and Remote Access Support

- 2.1.1 Abaco will respond to technical queries identified by the Customer relating to the installation and normal usage of the Licensed Product on Abaco hardware in its originally delivered form, unmodified by the Customer. The Customer shall initially direct such technical queries through to its local Abaco field support engineer via telephone during local office hours or email at any time. Abaco may also use provide remote assistance involving the use of trouble shooting tools in order to assist efforts in correcting technical problems.
- 2.1.2 Abaco will provide access to applicable Service Pack(s)/Upissued Products as these become available. Default delivery is via the web or by email or media to be agreed during Registration.

2.2 Limitations of Maintenance Services

- 2.2.1 Maintenance services under this Agreement will only be provided to the Customer, not the Customer's customers, unless that party should enter into a separate maintenance arrangement directly with Abaco. Unless a special arrangement is entered into with Abaco, this Agreement is valid only for maintenance services to a single site within the Customer's business.
- 2.2.2 Where remote assistance is provided using trouble shooting tools, Abaco will not accept liability for failure in such instances if such corrective effort is impaired due to the Customer being unable to accommodate the use of such tools. Furthermore, unless otherwise provided under Clause 2.2.6, remote assistance excludes on site assistance at the Customer's facility although this can be provided for an additional charge.
- 2.2.3 Where reasonable initial evidence suggests there could be a problem with the Licensed Product, Abaco will provide reasonable support (as Abaco deems fit) to assist the Customer in correcting the problem. However, Abaco makes no guarantee that any particular technical problem raised by Customer as a support issue can be solved by Abaco, though subject to the terms and conditions of this Agreement, Abaco will however make (i) reasonable efforts to do so, or (ii) make reasonable efforts to provide an equivalent functional workaround should this be a more effective route towards continued productive use of the Licensed Products by the Customer. Furthermore, attempted correction by Abaco of any problem identified in the Licensed Products is subject to the Customer reporting the problem(s) in sufficient detail including the provision of code segments/programs if necessary, to permit Abaco to reproduce the problem(s) at its facility. However, in the event that the reported problem is determined to be of the Customer's origin or relates to a third party host machine or third party software which is used to install and/or operate in conjunction with Abaco software products, then Abaco shall not have responsibility or liability for the problem, and Abaco may (subject to the costs incurred by Abaco at the point of determination) charge the Customer at Abaco then current per diem rates for any time expended to correct such a problem.
- 2.2.4 Abaco reserves the right to put forward use of the Upissued Products as the only solution to the Customer's problems, should available evidence show reasonable possibilities that the problems have either already been solved, or that use of the Upissued Products may at least alleviate the situation to the extent that any remaining problems may be more easily identified and solved. If the Customer refuses or otherwise objects to using such Upissued Products, then Abaco's responsibility is deemed satisfied.

- 2.2.5 Where the Licensed Products are intended to work in conjunction with third party software package(s), Abaco is under no obligation whatsoever to support specific revisions of the third party software via Upissued Products or any other means, excepting the specific revision supported at the time the Agreement commenced, and detailed with the Licensed Product description. While it is the general intention of Abaco to carry forward support where reasonably possible, changes in technology, or third party conditions, and/or obsolescence issues, may make support of later revisions impracticable. Certain Abaco products such as custom "one offs" may not in any case be carried forward to support third party revision changes, though a separate maintenance agreement may still be available, subject to use with the original third party revision.
- 2.2.6 In the event that information/programs provided to Abaco are not sufficient for Abaco to reproduce support problems on its premises, and yet the Customer has in good faith provided all information practicable, and further has implemented Abaco technical suggestions, Abaco will consider a technical support visit to the Customer site. However, in the case that such a visit goes ahead, and the prime cause of the problem is discovered *not* to be within the Licensed Products, Abaco reserves the right to charge for such visits at the then current per diem rate for labour plus expenses.
- 2.2.7 Where the Licensed Products contain any Source Materials, Abaco technical assistance will not cover problems associated with changes thereto made by the Customer, only installation, usage and explanation of functionality of the Licensed Products in their original form. However, certain changes (for example, of '.h' configuration files within a Board Support Package) may be regarded as 'configuration' rather than modification, and at the sole discretion of Abaco, technical assistance will still be provided. Problems identified to be due to hardware difficulties or features will not come under the scope of this Agreement, which covers only software products.

- 3 Warranty** Abaco warrants to the Customer that services provided under this Agreement shall be performed in a manner consistent with standard commercial practices in the industry. If any failure to meet this warranty appears within ninety (90) days after completion of the specific task in question (or other extended time period as Abaco may offer at its sole discretion), Abaco will correct any such failure by reperforming any defective portion of the maintenance services furnished. If reperformance is not practicable, Abaco will furnish, without charge, services in an amount essentially equal to those which, in Abaco's sole judgment, would have been required for reperformance. The warranties and remedies set forth herein are conditioned upon: (i) proper installation, use, and maintenance of the Licensed Product and the proper design and configuration of the system into which the Licensed Product is installed, and conformance with any applicable recommendations of Abaco; and (ii) Customer promptly notifying Abaco of any defects and making any personnel, software or computer systems available as necessary. The preceding sets forth the exclusive remedy for all claims based on failure of, or defects in, services provided hereunder, whether the failure or defect arises before or during the warranty period, and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. Upon the expiration of the warranty period, all such liability shall terminate. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. ABACO DOES NOT WARRANT ANY LICENSED PRODUCT OR SERVICES OF OTHERS WHICH CUSTOMER HAS DESIGNATED.
- 4 Limit of Liability** ABACO's LIABILITY ON ALL CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY SERVICES COVERED BY OR FURNISHED UNDER THESE TERMS AND CONDITIONS (INCLUDING REMEDIAL WARRANTY EFFORTS), OR FROM THE PERFORMANCE OR BREACH OF THESE TERMS AND CONDITIONS, SHALL IN NO CASE EXCEED THE ANNUAL CONTRACT PRICE OF THE SUPPORT SERVICES FURNISHED HEREUNDER. ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THIS AGREEMENT OR THE WARRANTY AS SPECIFIED IN SECTION 3 ABOVE, WHICHEVER IS LONGER.
- 5 Exclusion of Consequential Damages** IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL ABACO, ITS EMPLOYEES AND SUPPLIERS BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF ANY PROPERTY, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF THE CUSTOMER'S CUSTOMERS FOR SUCH DAMAGES AND THE CUSTOMER WILL INDEMNIFY ABACO, ITS EMPLOYEES AND SUPPLIERS AGAINST ANY SUCH CLAIMS FROM THE CUSTOMER'S CUSTOMERS.
- 6 Gratuitous Advice** If Abaco furnishes the Customer with advice or assistance concerning any products or systems which is not required pursuant to these terms and conditions, the furnishing of such advice or assistance will not subject Abaco to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.
- 7 Restrictions on Assignment** Customer may not assign or transfer this agreement without Abaco's prior written agreement.
- 8 Abaco's Rights** This Agreement does not alter the original terms of any Abaco license under which the Licensed Product was obtained for use by the Customer, and these shall remain in force. Therefore, all rights to and in the Service Packs, Upissued Products, or other corrections, additions, and documentation provided under this Agreement, shall continue to belong to Abaco, and the Customer's rights and obligations of use, transfer, confidentiality, etc. are governed by the terms of the original Abaco Licensed Product license.

9 Term and Termination

- 9.1 This Agreement shall become effective once all of the following events have occurred. For avoidance of doubt the period of maintenance support shall not commence until 9.1.3 below is effected:
- 9.1.1 Receipt by Abaco of Customer's annual maintenance support fee;
 - 9.1.2 Receipt by Abaco of Agreement Registration per section 12 which confirms acceptance of the terms hereof; and
 - 9.1.3 Initial delivery by Abaco of Licensed Product to Customer.
- 9.2 Subject to mutual agreement this Agreement may be renewed on a yearly basis prior to expiry of the 1 year support duration and continuation of the program for the Licensed Product and payment of the applicable Abaco yearly service fee then in effect.
- 9.3 Abaco shall notify Customer that the applicable service period is ending no less than thirty (30) days prior to expiration. Timely payment of the applicable yearly service fee, as provided for in Section 9 below, shall extend the Agreement and the maintenance service. If payment is not received as set forth herein, this Agreement will terminate and the Customer will be placed on inactive status. The Customer may reactivate this Agreement thereafter by paying a re-instatement fee, which Abaco may waive at its sole election, in addition to the annual maintenance support fee.
- 9.4 Abaco may alter, discontinue, or refuse to permit the renewal of this Agreement with respect to the Licensed Product(s) at any time. Customers will be notified of any alterations or planned discontinuation of the Agreement at the time of the commencement of any initial or renewal term of the Agreement. In the event of a discontinuation of the Agreement, Abaco will continue to provide the maintenance services to existing Customers, subject to payment of the applicable Abaco yearly maintenance service fee then in effect, until the expiration of the Customer's initial or renewal term.
- 9.5 The maintenance support hereunder shall automatically terminate in the event the License Agreement is terminated.

10 Charges and Payment Terms

- 10.1 Abaco may adjust its applicable yearly service fee for the maintenance support either up or down for each renewal year following the initial period of its provision of maintenance support, provided that Abaco notifies Customer of the amount of such adjustment at least thirty (30) days in advance of each such renewal.
- 10.2 Charges for each renewal year of this Agreement are due upon renewal and shall be paid within thirty (30) days of the date of Abaco's invoice therefor.

11 U.S. Government Contracting

- 11.1 If Customer is a U.S. Government entity or elects to sell products or services provided hereunder to the U.S. Government or to a contractor selling to the U.S. Government, the following provisions apply: (a) Customer agrees that all products and services provided Abaco meet the definition of "commercial-off-the-shelf" (COTS) or "commercial item" as defined in FAR 2.101, and that the subparagraphs of FAR 52.212-5(e) or FAR 52.244-6 (or, for orders from the U.S. Government, FAR 52.212-5 and FAR 52.212-4 with tailoring to the extent permitted by FAR 12.302 by replacing all paragraphs except those listed in FAR 12.302(b) with these Conditions of Sale), and (subject to subsection (e) below) DFARS 252.212-7001(c) or DFARS 252.244-7000, whichever are applicable, apply only to the extent applicable to COTS or commercial items and only as appropriate for the dollar value of this order; (b) with regard to any terms related Buy American Act or Trade Agreements, the country of origin of products is unknown unless otherwise specifically stated in writing by Abaco; (c) Customer agrees that any services offered by Abaco are exempt from the Service Contract Act of 1965 (FAR 52.222-41); (d) Customer agrees that this sale is not funded, in whole or in part, by the American Recovery and Reinvestment Act unless otherwise set forth in a written agreement of the parties; and (e) Customer is solely and exclusively responsible for compliance with any other applicable statutes or regulations governing sales to the U.S. Government, and Abaco makes no representations, certifications or warranties whatsoever with respect to the ability of its goods, services or prices to satisfy any such statutes and regulations other than those contained herein.

12 General Provisions

- 12.1 These Terms and Conditions, along with any terms and conditions or documents referenced herein, contain the complete agreement between the parties, and no modification, amendment, rescission, waiver or other change will be binding on Abaco unless agreed to in writing by Abaco's authorized representative. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on Abaco. The invalidity, in whole or part, of any sections or subsections hereof shall not affect the remainder of such section or subsection or any other section or subsection hereof.
- 12.2 This Agreement shall be governed by the laws of the State of New York without regard to its conflict of law provisions. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.
- 12.3 Customer shall not transmit to Abaco any information, suggestions, or ideas claimed by Customer to be confidential except pursuant to a writing, signed by an authorized representative of Abaco, which identifies such information and addresses its confidentiality.

13 Registration Services as detailed herein are ordered through the Abaco sales network. Once ordered, the Customer must sign and return this Agreement to Abaco, and register their usage of the Licensed Products covered by the Agreement. Registration establishes appropriate Customer details on Abaco's maintenance database, and serves to confirm the Licensed Products covered. Some technical details concerning system usage and/or product options may be asked. A full surface mail address of the Customer site, email/phone/fax details, and two technical contact names from the Customer's staff will be required. All maintenance issues shall be dealt with via these contacts. Customer registration will be confirmed via email to be followed up via surface mail.

Customer Service Department
Abaco Systems Limited
Tove Valley Business Park
Towcester, Northants, NN12 6PF
England
phone: +44 (0)1327 359444
e-mail: support.towcester@abaco.com

Customer Name: _____ Date: _____
Signature: _____ Position: _____
Printed Name: _____