



## SUPPORT POLICY

The Licensor, desktopsites Inc. ('desktopsites') provides product support and maintenance services for its products. These services provide the Licensee with technical assistance (i.e., support) and access to software upgrade releases (i.e. maintenance) as defined by the terms of the policy herein. The Licensee is the individual or company who has licensed one or more products from desktopsites.

### 1. SERVICE DEFINITIONS

In the Policy terms and conditions, unless the context otherwise requires, the following expressions have the following meanings:

**"Software"** means desktopsites software and any updates, modifications and corrections thereto provided by desktopsites to Licensee hereunder.

**"Product"** means, individually or collectively, the computer software that desktopsites either owns or has the right to license, in executable or object code, as updated from time to time, and any modifications, corrections, upgrades, improvements, derivatives or enhancements thereto including the associated documentation, written materials and manuals.

**"Subscription Policy"** means an agreement between desktopsites and Licensee, made per annum, which entitles the Licensee unlimited use of the software for the number of allowable logins purchased for the Subscription Policy Term.

**"Support Policy"** means an agreement between desktopsites and Licensee which entitles the Licensee access to Support Services for the software.

**"Support Services"** means help desk support provided by desktopsites to answer Licensee's questions, requests and inquiries about the Products, any services necessary to maintain the Products in a condition substantially in accordance with the specifications supplied by desktopsites.

**"Support Policy Charges"** means the charges per Incident for the Support Services offered by desktopsites and as amended from time to time by desktopsites.

**"Incident"** means the handling and resolution of a *single* question or issue regardless of the number of phone calls or emails required to resolve the question or issue.

**"Major Releases"** means an upgraded version of the software resulting in a new level being released by desktopsites for purchase to the general public (e.g. 2.0 to 3.0);

**"Upgrade Releases"** means repairs in defects, but not limited to, any changes, improvements, modifications or additions made by desktopsites, from time to time, to the Software (and, in future, to additional Modules if

purchased by the Licensee) designed to function in an operating environment similar to the Licensee's (as more particularly described in the Product Specifications), if such changes, improvements, modifications or additions are made at desktopsites' discretion without a specific request for same by the Licensee or any other party licensing the Software.

**"Maintenance Upgrade Policy"** means the Licensee has access to obtain Upgrade Releases for the Software for the Subscription Policy Term.

**"Current Release"** means the most recent revision of the Software that is made available at no additional charge to the Licensee.

**"Purchase Date"** means the date on which Licensee subscribes for and purchases an annual Subscription Policy and Support Policy for the software and number of allowable logins valid at the time of purchase from desktopsites by telephone or other electronic communication medium.

**"Subscription Policy Term"** means the period of one calendar year from the Purchase Date.

**"Enhancements"** means, with respect to the Software, any changes to the functionality of the Software specifically requested by the Licensee and developed by desktopsites outside of the initial product specifications and plans for further development, or prior to desktopsites' regular schedule for further developments.

### 2. SUBSCRIPTION POLICY RIGHTS

**2.1** The Licensee must purchase a Subscription Policy per annum for the Software and number of allowable logins in order to use the Software and Support Policy services.

**2.2** The Licensee's Subscription Policy Term shall begin on the Purchase Date and shall continue for a term of one year thereafter.

**2.3** During the Subscription Policy Term, desktopsites shall provide Licensee such Upgrade Releases for the Software originally subscribed for by the Licensee including Upgrade Releases for the number of allowable logins valid at the time of the Upgrade Release, without additional charge.

**2.4** desktopsites shall not be responsible for delivery of the Upgrade Release(s) to Licensee. Any such Upgrade Releases delivered to Licensee shall be considered Software.

### **3. SOFTWARE SUPPORT SERVICES**

desktopsites will provide the following Support Services in respect of the Software. desktopsites will:

**3.1** upon request, provide Upgrade Releases of the Software via email to Licensees during the Subscription Policy Term;

**3.2** provide such assistance as it deems reasonably necessary to cause the Software to perform materially in accordance with the then current documentation provided that Licensee installs all Upgrade Releases, modifications and corrections provided by desktopsites and that Licensee's use of the Software is in accordance with the documentation;

**3.3** provide Upgrade Releases to the software if and as required to cause it to operate under new versions or releases of the operating system approved by desktopsites for use with the software, so long as such Upgrade Releases are commercially reasonable, and will provide other updates, modifications and corrections to the Software as are approved for release to Licensee by desktopsites;

**3.4** permit Licensee to notify desktopsites of Software errors or defects it believes exist, and, if desktopsites is able to confirm that such error or defect exists through independent testing, desktopsites will use commercially reasonable efforts to correct such error or defect; a defect will only be considered to be re-creatable if the Licensee submits sufficient documentation to enable desktopsites to reproduce and verify the defect.

**3.5** provide reasonable telephone Software support, 9 a.m. – 5 p.m. MST Monday to Friday, excluding holidays.

**NOTE:** Any supplemental software code provided to Licensee as part of the Support Services shall be considered part of the software Product. With respect to technical information Licensee provides to desktopsites as part of the Support Services, desktopsites may use such information for its business purposes, including for product support and development. desktopsites will not utilize such technical information in a form that personally identifies the Licensee.

### **4. EXCEPTIONS**

The Support Services do not include any Support Services in respect of:

**4.1** any defects or errors in the Software resulting from any modification of the Software made by any person other than desktopsites; or

**4.2** use of any version of the Software other than the Current Release; or

**4.3** incorrect use of the Software or operator error; or

**4.4** any fault in the Hardware or in any programs used in conjunction with the Software;

### **5. SERVICE VISITS OUTSIDE THE SUPPORT AND MAINTENANCE POLICY**

On-site / remote services will be provided by quotation, are not covered by this policy, and shall be provided at the sole discretion of desktopsites. Additional desktopsites consulting and/or coding services may also be available to the Licensee under a separate agreement. desktopsites may provide assistance to help optimize or enhance the Licensee's use of the product. When desktopsites determines that any such assistance has exceeded a reasonable level, desktopsites will supply a quotation for additional consulting services in accordance with its standard scale of charges for the time being in force, in respect of the Software:

**5.1** made at the request of the Licensee by reason of any fault in the Software due to causes not covered by the Support and Maintenance Policy; or

**5.2** made at the request of the Licensee but which desktopsites finds are frivolous or not necessary;

**5.3** to support and train Licensee's personnel with respect to the user of the Software

**NOTE:** Should the Licensee make any modifications or upgrades to its operating environment which adversely affects the performance of the Software, any problems arising therefrom requiring any modifications to the Software, shall not be covered as Support and Maintenance and shall be addressed by desktopsites.

### **6. LICENSEE'S OBLIGATIONS**

Licensee shall:

**6.1** use only the Current Release of the Software;

- 6.2 ensure that the Software is used in a proper manner by competent trained employees only or by persons under their supervision;
- 6.3 keep full security copies of the Software and of its data bases and computer records in accordance with best computing practices;
- 6.4 not alter or modify the Software in any way nor permit the Software to be combined with any other program to form a combined work;
- 6.5 co-operate fully with desktopsites personnel in the diagnosis of any error or defect in the Software;

**NOTE:** Upgrade releases do not include future Major Releases that are in addition to the basic Software initially licensed by the Licensee (but can be Upgrade Releases for future Major Releases purchased by the Licensee in the future), nor Enhancements specifically requested by the Licensee, nor any services provided to the Licensee by desktopsites under the Support and Maintenance Policy. All such services shall be provided to the Licensee at desktopsites normal consulting rates.

## 7. CONFIDENTIALITY

Each party shall treat as confidential all information obtained from the other and shall not divulge such information to any party (except to such party's own employees and then only to those employees who need to know the same) without the party's prior written consent provided that this clause shall not extend to information which is already public knowledge or becomes so at a future date (otherwise then as a result of a breach of this Clause) or which is trivial or obvious. Each party shall take all reasonable steps to ensure that its employees are aware of and comply with the provisions of this Clause. The foregoing obligation of confidentiality shall survive any termination of this Policy.

## 8. WARRANTIES

- 8.1 desktopsites represents that each desktopsites employee assigned to perform Support Services hereunder will have industry standard skills and training so as to be able to perform in a competent and professional manner.
- 8.2 ANY THIRD PARTY SOFTWARE IS PROVIDED "AS IS". desktopsites provides no support or warranty services for Third Party Software. To the extent permitted, desktopsites shall pass through and assign to Licensee any and all suppliers' warranties, if any, for Third Party Software.

8.3 THE EXPRESS WARRANTIES IN THIS SECTION 8 ARE EXCLUSIVE. DESKTOPSITES DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. DESKTOPSITES WILL NOT BE LIABLE TO LICENSEE FOR ANY LOSS OF DATA OR SOFTWARE RESULTING FROM OR RELATING TO DESKTOPSITES' SERVICES OR THE SOFTWARE.

8.4 IN NO EVENT WILL DESKTOPSITES BE LIABLE TO LICENSEE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICES PROVIDED BY DESKTOPSITES, OR THE PRODUCT, EVEN IF DESKTOPSITES HAS BEEN ADVISED OF THE POSSIBILITY OR KNEW OF OR SHOULD HAVE KNOWN THEREOF. DESKTOPSITES' TOTAL LIABILITY TO LICENSEE HEREUNDER, IN ANY, WILL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID TO DESKTOPSITES HEREUNDER IN THE IMMEDIATELY PRECEDING SIX (6) MONTHS.

8.5 If Licensee falls within any of the foregoing exceptions: any defects or problems caused in whole or part by (i) defects in any equipment, (ii) failure of any portion of equipment to function in accordance with manufacturer's specifications, (iii) modifications or enhancements made to the Software by anyone other than desktopsites, (iv) any software, hardware, firmware, peripheral or communication devices used with the Software not provided by or approved of in writing by desktopsites, (v) failure of Licensee or any third party to follow desktopsites' most current instructions for proper use of the Software, (vi) negligence of Licensee or any third party, or (vii) failure to install and use the updates, modifications and corrections provided by desktopsites, and requests desktopsites to provide Support Services for such defect or problem, Licensee will pay desktopsites for services at desktopsites' then current hourly rate.

## 9. ASSIGNMENT

Neither this Policy nor any rights hereunder may be transferred, assigned, sublicensed or otherwise

disposed of by Licensee to a third party, by operation of law or otherwise, without desktopsites' prior written consent.

**10. PARTIAL INVALIDITY**

If any provision of this Policy is ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, the validity and enforceability of all provisions of this Policy not ruled to be invalid or unenforceable will be unaffected.

**11. MODIFICATION; WAIVER**

This Policy may not be modified or amended except in writing signed by the parties. No term or condition of this Policy may be waived except in writing signed by the party charged with the waiver. A waiver will operate only as to the specific term or condition waived and will not constitute a waiver for the future.

**12. GOVERNING LAW**

This Policy will be governed exclusively by the laws of the Province of Alberta, Canada without regard to its conflict of laws provisions. All parties agree that venue regarding any action arising hereunder will be exclusively in Calgary, Alberta, Canada.

**13. INDEPENDENT CONTRACTOR**

The relationship of the parties hereunder will be one of independent contractors and not that of a franchise, joint venture or employer. Neither party will have, and neither of them will represent to any other person that it has, any power, right or authority to bind the other, or to assume or create, any obligation or responsibility, express or implied, on behalf of the other, except as expressly provided by this Policy or as otherwise permitted in writing signed by both parties.

**14. ENTIRE AGREEMENT**

This Policy constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersede and cancel all prior agreements between the parties, written, oral or implied with respect to the subject matter hereof.

**15. HEADINGS**

Headings are included in this Policy for convenience only and are not to be deemed to be

part of this Policy. The interpretation of this Policy will not be affected by any heading herein.

**16. FORCE MAJEURE**

In the event an act of government, war, fire, flood, act of God, power shortages or blackouts, breakdown of telephone lines and services, failure of the Internet, or other causes beyond the reasonable control of desktopsites prevents desktopsites from performing in accordance with the terms of this Policy, such nonperformance shall be excused and shall not be considered a breach or default for so long as such conditions prevail.