



# PREMIUM MAINTENANCE AGREEMENT

## TERMS AND CONDITIONS

1. **PURPOSE.** Customer desires that **Business Continuity Asia Pacific** (BCAP Pty Limited, ABN 15 118 574 566) ("BCAP") provide maintenance services for the computer software programs ("**Software**") purchased by the Customer from BCAP and which BCAP has notified to the Customer are bundled with support services under the terms of this agreement. From the date the software is shipped BCAP shall provide these services upon the terms and conditions herein.

2. **TERM.** This agreement shall, unless earlier terminated pursuant to paragraph 8 below, remain in full force and effect for one (1) year and shall thereafter be automatically renewed for successive 1 year terms, subject to payment of Maintenance Fees, unless earlier terminated.

3. **MAINTENANCE FEE.** BCAP may adjust the fee ("**Maintenance Fee**") payable for each year of continued delivery of support and maintenance services to reflect its then-current standard fees by notice to Customer at least thirty (30) days prior to the date on which the next Maintenance Fee is due for payment by Customer. Additional maintenance fees shall apply if Customer allows support to lapse for a period of more than thirty (30) days. If Customer allows this Maintenance Agreement to lapse for a period of two (2) years or more for any Software, Customer is not eligible to renew this Maintenance Agreement and in order to receive support, services provided herein, will have to purchase new Software.

4. **OTHER SERVICE CHARGES.** The Maintenance Fee shall cover all services provided hereunder, but shall not cover the cost of any materials, parts, manuals, software, travel, or other disbursements as may be necessary or requested by Customer, which shall be billed to Customer as separate costs when they occur.

5. **ASSISTANCE OF SOFTWARE VENDORS.** Customer acknowledges that the maintenance and support services under this agreement may be undertaken in conjunction with the Vendor (or a contractor or affiliate of the Vendor) of the Software. For the purposes of certainty, each reference to BCAP in this agreement should be read as a reference BCAP,

the Vendor of the Software and/or any contractor or other affiliate of the vendor.

6. **MAINTENANCE SERVICES.** After the first year of the agreement, BCAP shall, in exchange for payment of the Maintenance Fee, continue to perform the following maintenance services:

- (a) **Error Correction.** BCAP shall use reasonable endeavors to correct all reproducible errors that materially affect operation of the Software as follows: Customer shall notify BCAP of any such errors in writing, with a written description of each claimed error and the conditions under which it occurred. BCAP shall work to correct all such errors that it can verify based on the information provided by the Customer, 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 BCAP shall attempt to correct or eliminate the error in the next release of the Software. Customer may notify BCAP of claimed errors by telephone, provided that the written notice described above must be furnished by the next business day, and that BCAP need not begin work promptly if the telephone information is incomplete or inadequate.
- (b) **Support (Telephone).** BCAP will use reasonable endeavors provide 3 hour response times for telephone support 24 hours, 7 days. This includes any assistance Customer may require in using the Software that can be handled by telephone. Critical support issues should be notified via telephone:
  - (i) **9am to 5pm EST** on +61 7 3177 1000 (select option 2); and
  - (ii) **5 pm to 9 am EST** 1300 657764 in Australia and 0800 222632 in New Zealand.

- (c) **(Email)**. BCAP will use reasonable endeavors to respond to support requests submitted via email within 24 hours of receipt. Requests for support via email should be sent to [support@business-continuity.com.au](mailto:support@business-continuity.com.au).
- (d) **Software Updates and Upgrades**. Customer will receive all standard software version updates and upgrades ("**Standard Updates**") released by the Vendor(s) of the Software, free of charge, during the paid maintenance period. Standard Updates include those updates released by the Vendor(s) of the Software generally to the Vendor(s)' existing Customers, primarily to correct or eliminate errors in the prior release of the Software and also to enhance existing features (example: updating from revision 4.3.1 to revision 4.3.2, or from revision 4.2 to revision 4.3 or even updating from revision 4.3 to revision 5.0). Standard Updates do not include upgrades of the Software for which the Vendor would generally charge an additional fee (**example**: upgrading from a *Microsoft Server* version of software to a *Microsoft Advanced Server* version of any Software).
- (e) **Other Services**. Any services not listed above, (e.g. on-site assistance or maintenance, any requested modifications to any of the Software etc), shall be performed by BCAP in its sole discretion, at its then-current standard hourly rates, and subject to such other written terms or agreements as required by BCAP

**7. NEW RELEASE AND END OF LIFE**. In the event that a Vendor releases a new version of the Software, BCAP shall provide maintenance services (i.e. all the services defined in paragraph 6 of this agreement) for the release immediately preceding the new release for one (1) year from the date of the new release. Thereafter, BCAP shall provide telephone support only (i.e. clause 6(b)) for such prior release.

In the event that a Vendor "end of life's" Software, BCAP will provide telephone support only for the end of life Software for one (1) year from the date of the date the end of life of the Software is announced by the Vendor.

**8. CUSTOMER'S OBLIGATIONS**. Customer will cooperate with BCAP in connection with the performance of the services under this agreement. Customer shall provide BCAP with such information concerning Customers operations as BCAP shall reasonably request and as shall be necessary for the performance of BCAP services hereunder.

**9. MODIFICATIONS BY CUSTOMER**. You shall not modify, decompile, create any derivative work of or, incorporate any

other software into the Software or any part thereof. BCAP shall not be responsible for maintenance of, or for repair of errors or malfunctions occasioned by, any modification or enhancement to the Software made by Customer or by anyone other than BCAP. Any modifications or enhancements made by anyone other than BCAP or a Vendor shall be grounds for immediate termination of this agreement.

**10. WARRANTY AND LIABILITY**. ALL SERVICES AND MATERIALS ARE PROVIDED BY BCAP "AS IS". IN NO EVENT SHALL BCAP, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND/OR CONSULTANTS, BE LIABLE TO CUSTOMER OR ANY OF ITS AFFILIATES FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES EVEN IF BCAP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR LOSS OR DAMAGE DIRECTLY OR INDIRECTLY ARISING FROM THE SERVICES PROVIDED HEREUNDER.

BCAP's cumulative liability hereunder for damages, regardless of the form of action, shall not exceed the Maintenance Fee actually paid hereunder in the year such claim arose. BCAP shall not be liable for any lost profits, or for any claim or demand against the Customer by any third party on account of services performed hereunder. BCAP recommends that the Software be installed by a properly certified professional (whether certified through BCAP's Professional Services Group or otherwise). However, if the Customer elects to install the Software without the assistance of a properly certified implementation specialist, the Customer is solely responsible for ensuring that the Software is installed properly so that it achieves its intended results and for the results actually obtained. BCAP shall have no responsibility or liability under this Agreement or any warranty hereunder, to the extent such warranty exists, to correct, validate, bring into compliance or otherwise remedy any problem with the Software that is caused in whole or in part by the improper or inadequate installation of the Software by Customer or incompatibility of Customer's environment, hardware or software with the Software.

**11. TERMINATION**. BCAP may terminate with immediate effect in the event Customer fails to pay the Maintenance Fee within two weeks after it is due. Customer may terminate this Agreement immediately at any time, provided that it has paid the full amount of all maintenance payments due through the end of the then current term, unless termination is due to breach by BCAP.

**10. LICENSE RIGHTS**. Any and all Software modifications and Maintenance Updates provided by a Vendor hereunder shall be part of the Software to which they apply and owned exclusively by the Vendor, and the Customer's rights and/or licenses thereto shall be governed by the Customer's then-

current agreement with BCAP and/or the Vendor (as relevant) regarding such Software.

## 12. GENERAL

- (a) **Merger.** This Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes all existing agreements and all oral, written or other communications between them concerning its subject matter. This Agreement shall not be modified in any way except by a writing signed by both parties.
- (b) **Assignment.** Customer may not assign this Agreement without prior written consent by BCAP. This Agreement shall be fully binding and enforceable as against all permitted assignees and successors in interest.
- (c) **Enforceability.** If any provision of the Agreement (or any portion thereof) shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby.
- (d) **Law and Forum.** This Agreement (and any and all amendments thereto) and its validity, construction and performance shall be governed in all respects by the laws of Queensland in Australia, without regard to Queensland Australia's choice of law rules. Exclusive jurisdiction and venue for all matters relating to this Agreement shall be in Queensland Australia, and the parties hereby agree and consent to such jurisdiction and venue.
- (e) **Notices.** All notices shall be in writing and shall be forwarded by registered or certified mail or by overnight express courier requiring signature of the recipient to complete delivery, and sent to the parties at the addresses set forth at the top of this Agreement or to any other addresses designated in writing hereafter, ATT: Chief Executive Officer. Notices sent by mail shall be deemed delivered seven (7) business days after mailing; notices sent by courier as described above shall be deemed delivered the day after they are given to the courier by the notifying party. Notwithstanding the foregoing, notices of Software errors under this Agreement may be sent by email with voice verification of receipt.
- (f) **Headings.** The headings in this Agreement are intended for convenience of reference and shall not affect its interpretation.
- (g) **Non-Waiver.** The failure of either Customer or BCAP upon strict performance of any of the provisions contained herein shall in no way constitute a waiver of future violations of the same or any other provision.
- (h) **Authority.** The individuals executing this Agreement on behalf of Customer and BCAP each hereby represent and warrant that they are duly authorized by all necessary action to execute this Agreement on behalf of their respective principals.
- (i) **No Third Party Rights.** This Agreement does not create any rights in any third parties, except assigns, successors of heirs expressly permitted hereunder.