

Maintenance & Support Agreement ("Agreement")

This Agreement sets out Cadonix' and Customer's rights and obligations in relation to the Software. Please read this document prior to accessing the Software. By accessing the Software you hereby acknowledge that you have read and understood this document and that you accept the terms and conditions herein.

PARTIES

- (1) Cadonix Ltd., a company registered in England and Wales under company number 08032343, having its registered office at John Eccles House, Robert Robinson Avenue, Oxford Science Park, Oxford OX4 4GP, United Kingdom (**Cadonix**); and
- (2) The entity identified in the applicable Order(s)(**Customer**)

BACKGROUND

Cadonix has supplied and licensed Software (defined below) to Customer under the terms of the Licence (defined below) and has agreed to provide support and maintenance for such Software on the terms set out in this Agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Charges: the charges payable for the Services under this Agreement in accordance with clause 5.

Confidential information: has the meaning given in clause 10.

Contract Year: any 12-month period ending on any anniversary of the date of this Agreement.

Documentation: the documents provided by Cadonix for the Software, in either printed text or machine readable form, including the technical documentation, program specification and operations manual.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Licence: the accompanying current Cadonix End-User Licence Agreement (EULA).

Maintenance Release: a release of Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Manager: the person appointed by Customer from time to time in order to fulfil the role described in clause 8.2.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by Cadonix in the course of its normal business, being a new version which contains such significant difference from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Service Levels: those standards of performance to be achieved by Cadonix in performing the Standard Support Service as set out in Schedule 1.

Services: includes the Standard Support Service and the Updating Service.

Software: has the same meaning as in the Licence.

Support Hours: between the hours of 09:00 and 17:00 GMT.

Support Service: the support service more particularly described in Schedule 1 which is to be provided by Cadonix to Customer under clause 3.1.

Support Staff: those officers, employees, agents or subcontractors of Cadonix connected with this Agreement, including those individuals who perform Cadonix's obligations under this Agreement and (where the context permits) the Support Manager.

Term: has the meaning set out in clause 12.

Updating Service: the service to be supplied by Cadonix to Customer under clause 3.1 and clause 3.3.

1.2 The headings in this Agreement do not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.

1.3 If any conflict arises between this Agreement and the Licence, the terms of the Licence shall prevail.

2. SOFTWARE

2.1 This Agreement relates to the provision of support of the Software by Cadonix to Customer.

2.2 In relation to Maintenance Releases, as part of the Updating Service, Cadonix will from time to time make Maintenance Releases available to Customer without charge during the Term.

3. THE SERVICES

3.1 Cadonix shall supply, and Customer shall take and pay for, the following Services:

- (a) the Support Service; and
- (b) the Updating Service.

3.2 In relation to the Support Service:

- (a) the Support Service shall be provided during Cadonix's normal business hours and shall comprise:
 - (i) online technical support to provide first-line technical support to users of the Software;
 - (ii) remote diagnosis and, where possible, correction of faults using the Software management software; and
 - (iii) email technical support.
- (b) if on-site support is required in any month it will be provided by Cadonix and the costs of such on-site support shall be paid to Cadonix by Customer. The parties will agree on such costs in writing before Cadonix provides on-site support.
- (c) the Support Service shall meet the Service Levels set out in Schedule 1.

3.3 In relation to the Updating Service:

- (a) Cadonix shall issue Maintenance Releases of the Software as and when required in the reasonable opinion of Cadonix;
- (b) before issuing any Maintenance Release, Cadonix shall test the same in order to ensure that it performs fully in accordance with its specification and the Documentation;
- (c) if hosted by Customer at Customer's direction and at a time to be agreed between the Manager and the Support Manager, Cadonix shall install, integrate and test any Maintenance Release, and shall, if so required by Customer, provide reasonable assistance to Customer in testing the same. If the Maintenance Release fails to achieve acceptance by Customer, Cadonix shall co-operate with Customer in decommissioning the Maintenance Release and returning the Software to its state before the acceptance tests, so that Customer can continue to operate the Software until a time for repeat installation, integration and testing;
- (d) the Updating Service shall include the supply to Customer of all revisions to the Documentation which are necessary in order to reflect any Maintenance Release; and
- (e) for the avoidance of doubt, although the cost of the Updating Service is included in the Charges payable for the Support Service there may be additional charges for any issues that arise on Customer-hosted installations that are beyond Cadonix' control.

4. SUPPORT

- 4.1 Should Customer require Cadonix to provide Services, Customer should contact Cadonix by email in the first instance and Cadonix will process any request in accordance with the Service Levels detailed in Schedule 1.

5. CHARGES

- 5.1 In consideration of the Services, Customer shall pay to Cadonix all charges at prior agreed or current list price.
- 5.2 In the event that this Agreement is extended by the parties beyond the Initial Term, the amount payable by Customer to Cadonix in respect of subsequent Contract Years shall increase in line with the Cadonix current list price. If Customer does not agree to any such increase, it shall have the right to terminate this Agreement at the end of the then-current Term.
- 5.3 All payments due by Customer to Cadonix under this Agreement shall be paid by Customer to such account details as are provided by Cadonix from time to time and within thirty (30) days of the Effective Date in respect of the first Contract Year and within thirty (30) days of the anniversary of the Effective Date for subsequent Contract Years.

6. CUSTOMER'S RESPONSIBILITIES

Customer shall nominate a Manager to be available to liaise with, and respond to queries from, the Support Manager (for example, as to the resolution of conflicting priorities between two or more items of support or maintenance).

7. RISK AND TITLE

Risk in, and title to, any media bearing any Software or Documentation or other information that may from time to time be supplied by Cadonix to Customer shall pass to Customer on acceptance of the same by Customer. Notwithstanding the foregoing, however, in the event the media bearing any Software or Documentation is damaged or becomes corrupted during the Term of this Agreement, Cadonix will supply to Customer an additional copy of the same at reasonable fee.

8. CONFIDENTIALITY AND PUBLICITY

- 8.1 Each party shall, during the Term of this Agreement and thereafter, keep confidential, and shall not use for its own purposes (other than implementation of this Agreement) nor without the prior written consent of the other, disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates (**Confidential Information**), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such Confidential Information. Notwithstanding the foregoing, however, Customer may disclose Confidential Information to its contractors who have a need to access the Software or Documentation in order to provide Customer with services relating to its internal business functions. In such case, the contractor shall have agreed to the terms of a confidentiality and non-disclosure agreement at least as restrictive as this Agreement, and Customer will be liable for the breach of this Agreement by any such contractor.
- 8.2 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 8.3 The provisions of this clause 8 shall remain in full force for a period of five (5) years following expiry or earlier termination of this Agreement.
- 8.4 Cadonix may not refer to Customer or this Agreement in any publicity or advertising material without first obtaining Customer's written consent.

8.5 Any prior Confidentiality and Nondisclosure Agreement (the “NDA”) between the parties shall apply to all Confidential Information provided by one party to the other hereunder, and the NDA is incorporated herein by reference. If there is a conflict between the terms of this Agreement and the NDA, the more restrictive provision will control.

9. CADONIX'S WARRANTIES, INDEMNITIES AND UNDERTAKINGS

9.1 Cadonix acknowledges that Customer has entered into this Agreement in reliance on Cadonix's expertise and experience of developing and supporting the Software.

9.2 Cadonix represents and warrants to Customer that:

- (a) the Services will be performed:
 - (i) in such a way as not to cause any material fault or malfunction in the Software;
 - (ii) in such a way as not to cause any substantial interruption to the business processes of Customer (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner);
 - (iii) in accordance with all applicable laws and regulations; and
 - (iv) with reasonable skill and care;
- (b) it shall use its best efforts not to introduce any viruses onto Customer's systems while performing the Services;
- (c) any Maintenance Release provided under this Agreement will be of satisfactory quality and conform substantially to the specifications set forth in the Documentation;
- (d) at the date of this Agreement, Cadonix has obtained and will maintain for the duration of this Agreement all permissions, licences and consents necessary for Cadonix to perform the Services; and
- (e) Cadonix has adequate resources to meet its obligations under this Agreement in a timely and reliable manner.

10. LIMITATION OF LIABILITY

10.1 Neither party shall in any circumstances have any liability for any losses or damages which may be suffered by the other which fall within any of the following categories:

- (a) special damage even though that party was aware of the circumstances in which such special damage could arise;
- (b) loss of profits;
- (c) loss of anticipated savings;
- (d) loss of business opportunity and management time; and
- (e) loss of goodwill.

10.2 Each party's maximum liability under this Agreement shall be the amount paid by Customer under this Agreement within the immediately preceding twelve (12) month period.

10.3 Neither party excludes any liability for death or personal injury or property damage caused by its negligence, or the negligence of its employees or agents, or for fraud or fraudulent misrepresentation.

11. ASSIGNMENT

11.1 Neither party shall assign or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). Notwithstanding the foregoing, Cadonix may assign or novate its rights or obligations under this Agreement to a third party who acquires a controlling stake in the Cadonix business, and on the condition that such assignee has expertise and experience of supporting the Software, this Agreement shall remain in full force and effect. If such assignee does not have expertise and experience comparable to that of Cadonix, Customer shall have the right to terminate this Agreement with written notice to such assignee.

12. DURATION

- 12.1 Supply of the Services by Cadonix to Customer shall commence on the Effective Date and, subject to termination in accordance with the provisions of this Agreement, shall continue for a fixed term of twelve (12) months unless extended by the parties in writing in accordance with clause 12.2.
- 12.2 At least forty five (45) days before the end of the Term, Cadonix shall submit a proposal to Customer setting out the cost of renewing this Agreement for a further one (1) Contract Year and any other changes which might be needed to the terms of this Agreement. If Customer elects to renew this Agreement on the terms of Cadonix's proposal, it shall notify Cadonix in writing before the expiry of the then current Term of this Agreement, whereupon this Agreement shall be renewed for a further period of one (1) Contract Year on the same terms subject to any changes agreed by Customer via its acceptance of the proposal.

13. TERMINATION

- 13.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may at any time terminate this Agreement and/or the Services with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
 - (b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - (c) any warranty given in clause 9 is found to be untrue or misleading.
- 13.2 This Agreement shall expire at the end of the Term unless extended in writing by the parties following the procedure set out in clause 12.2.
- 13.3 This Agreement shall automatically terminate on termination or expiry of the Licence but expiry or any termination of this Agreement (however caused) shall have no effect on the licences granted under the Licence.

14. EFFECT OF TERMINATION

- 14.1 Other than as set out in this Agreement, neither party shall have any further obligation to the other under this Agreement after its termination.
- 14.2 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement, including clause 1, clause 8 to 10, and clause 14 to 25 shall remain in full force and effect.
- 14.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

15. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17. ENTIRE AGREEMENT

This Agreement and any active NDA contains the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person other than as expressly set forth herein or in the Documentation.

18. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. SEVERANCE

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

20. THIRD-PARTY RIGHTS

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999, or equivalent, to enforce any term of this Agreement.

21. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. Delivery of counterparts may be in PDF format to such email addresses as the parties may specify.

22. NO PARTNERSHIP OR AGENCY

22.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

23. FORCE MAJEURE

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for three months, the party not affected may terminate this Agreement by giving thirty (30) days' written notice to the affected party.

24. NOTICES

24.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class signed for post, or by e-mail, or other next working day delivery service at its registered office or its principal place of business as set forth in the License;

24.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, on the date delivered;
- (c) If sent by email, on the same Business Day if sent before 5pm GMT or if sent after 5PM GMT on the next Business Day.

25. GOVERNING LAW AND JURISDICTION

25.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed under the laws of England and Wales and shall be submitted to the non-exclusive jurisdiction of the courts of England and Wales. The provisions of this Section 25.1 shall survive the termination of this Agreement.

BY ACCESSING THE SOFTWARE THE CUSTOMER HEREBY AGREES TO THE TERMS OF THIS AGREEMENT WHICH ARE LEGALLY BINDING. IF THE CUSTOMER DOES NOT AGREE WITH THE TERMS OF THIS AGREEMENT IT SHOULD NOT ACCESS THE SOFTWARE.

Schedule 1 Support Service

SLA Name	First Response (Business Hours)
P1	15 mins
P2	2-3 hours
P3	6-8 hours
P4	12-14 hours

Priorities defined below:

P1 Cadonix system down or major malfunction resulting in an inoperative system. Customer's users unable to reasonably perform their normal functions. The specific functionality is mission critical to the Customer business and the situation is considered an emergency.

P2 Critical loss of functionality or performance of the Software resulting in a high number of Customer's users unable to perform their normal functions. Major Software failure; inconvenient workaround or no workaround exists. The Cadonix system is usable but severely limited.

P3 Moderate loss of functionality or performance of Software resulting in multiple Customer's users impacted in their normal functions. Minor failure; convenient workaround exists/minor performance degradation/not impacting use of the Cadonix system.

P4 Minor loss of Software functionality and advisory questions. The issue consists of advisory questions including issues related to one or multiple modules and integration, installation and configuration enquiries, enhancement requests or Document questions.

Note:

The SLAs stated by Cadonix are limited only to support of the Software which Customer is permitted to use under the Licence. In the case where Customer is hosting the Software on Customer's own systems, the support only extends to the Software as provided by Cadonix and excludes all server related issues, including but not limited to, operating system, software updates, virus prevention, access control, backups, networking, hardware issues and in the event of an issue Customer agrees to remove all access impediments and barriers to allow Cadonix to carry out its agreed duties in a timely manner.