

Terms and Conditions

1 Definitions

"**The Customer**" is your company name.

"**Products**" refers to the software products as mentioned on the Support Certificate.

"**Upgrade**" refers to a new release of the Products to support new versions of the underlying operating systems, database management software and/or application software.

"**Maintenance**" refers to the activities performed by Mekon with the purpose to keep the Products operational and to correct any errors in the software that show during use.

"**Contracted business hours**" refers to 9:00 a.m. (GMT time) to 5:30 p.m. Monday to Friday inclusive, excluding Public Holidays.

"**Support**" refers to assistance in the use of the Products listed on the Support Certificate.

"**On-site Support**" refers to Support that is provided on the Installation Address.

"**Support Call**" refers to any software problem which is technical or operator related.

"**Consultancy**" refers to advise required on work methods or how best to use the products.

"**CRAIN**" refers to Client Reporting and Issues Network available via the Mekon website at www.mekon.com.

2 Term

The term of this Agreement shall be for a period of one (1) year, starting at the start date as defined on the Support Certificate, subject to the extension and termination provisions below.

3 Extension

This Agreement shall be automatically renewed for successive one (1) year periods after the initial term, unless terminated pursuant to article 4 of this Agreement, or by mutual agreement of The Customer and Mekon at least six (6) weeks prior to the expiration of the then-current term.

4 Termination of the Agreement

This Agreement will remain active until the Agreement is terminated upon any of the following events:

- The Customer or Mekon informs the other party in writing that it wishes to terminate the Agreement, at least six (6) weeks before the end of the first or a sequential period. The Agreement terminates at the end date of the then current sequential period, unless The Customer and Mekon agree otherwise in writing;
- A new agreement, or a modified agreement, has been reached between The Customer and Mekon regarding the same subject matter;
- The insolvency of either The Customer or Mekon, or the institution of any proceedings, or taking of any measures, for the dissolution or the winding up of either The Customer or Mekon. Directly after such event this Agreement will end automatically;
- By either party forthwith on written notice if the other party is in material breach of this Agreement and in the event of a breach capable of being remedied, fails to remedy the breach within 28 days of receipt of notice thereof in writing.

Upon expiration or termination, neither of the parties to this Agreement shall be under any obligation to the other party under this Agreement, except any obligations that will have arisen under this Agreement prior to its expiration or termination, including payment of overdue fees.

5 Additional Products

If The Customer purchases additional products and/or additional maintenance services during the period in which this Agreement is active, Mekon will send a modified Support Certificate to The Customer, in which the additional software products and/or maintenance services are mentioned, as well as a start date and an end date for the Maintenance and Support services mentioned in this Support Certificate.

6 Exceptions

Any services provided by Mekon that do not fall within the limitations of this Agreement, or services that are explicitly excluded, will be invoiced according to the rates or, failing which, the standard rates that Mekon applies for similar work.

This Agreement is not applicable to support or maintenance arising from any errors that are caused by hardware and/or software that is not supplied by Mekon or errors that are caused by modifications that have not been carried out by Mekon personnel or personnel that has been appointed by Mekon to carry out the modifications.

7 Liability

Any services provided by Mekon are not subject to any condition or warranty expressed, implied or statutory and any conditions and warranties are hereby expressly excluded in so far as permitted by statute and (save for Mekon's liability for death or personal injury caused by the negligence of Mekon, its employees or agents) Mekon will not be responsible for any liability, claim, loss, damage or expense of any kind or nature caused directly or indirectly by the maintenance and support services mentioned in this Agreement or their use.

The Customer shall be solely responsible for and hold Mekon fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses suffered or incurred by Mekon as a result of any breach or default on the part of The Customer in connection with the subject matter of this Agreement.

8 Terms of Payment

Payment shall be made yearly in advance by The Customer within 30 days of receipt of an invoice from Mekon. All prices are in pounds sterling, excluding VAT. Amounts due shall be invoiced at the start of each calendar year in which this Agreement is effective. If the start date of this Agreement does not coincide with the start of a calendar year, the amounts due shall be invoiced at a pro-rata basis for the period between the start date and the end of the calendar year. If the end date does not coincide with the end of a calendar year, the same principle will be applied.

9 Transfer of Rights

This Agreement, or any right therein, can be transferred to another party only if both The Customer and Mekon do agree so in writing.

10 Complete Agreement

The complete agreement consists of this Agreement. This Agreement supersedes any and all prior agreements, understandings, promises and representations by both parties. Amendments, additions and modifications to this Agreement are legal only when both parties acknowledge such amendments, additions and modifications by letter, signed by authorised representatives of both parties.

11 Warranty

Mekon hereby warrants that all reasonable skill, care and diligence shall be taken in its performance of the services and shall in all professional matters act as a faithful advisor to The Customer.

12 Force Majeure

Mekon will not be under any liability to The Customer for non-provision, part provision, ineffective provision or delay in provision of any of the services provided by Mekon, directly or indirectly caused by or as a result of any act of God, outbreak of hostilities, insurrection, riot, civil disturbance, acts of terrorism, or regulations of any government or authority or any other cause beyond the reasonable control of Mekon.

Mekon will notify The Customer of such event within 30 days of such event where practicable. If as a direct or indirect result of such event the provision of any part of the services is prevented, Mekon may decline to provide the services or reasonably delay provision of the services. Mekon and The Customer will agree the payment to be made in respect of the services which are provided. The Customer will not be required to make payment where the services are not provided.

13 Choice of Law and Assignment

This Agreement shall be governed by English Law.

14 Disputes

Both Parties shall expend reasonable effort to resolve any dispute that may arise with respect to the conclusion, interpretation or execution of this Agreement, as well as any other dispute in the matter of or in connection with this Agreement, either legal or factual, without juridical intervention.

Any dispute that can not be resolved in the aforementioned manner, and that can not be resolved by mutually agreed arbitration, shall be submitted to the courts.

A dispute is present if either of the parties alleges so in writing.

Services Provided

The Customer does not have to take all the services available.

1 Description of Services

(1) Maintenance

Mekon will provide The Customer with new minor and major releases of the Products if they have taken out maintenance with Mekon, free of charge. New releases will be delivered on the applicable media including a description of installation procedures, and including new manuals, if applicable.

If The Customer plans to upgrade its computer systems, operating systems, database management software or application software, The Customer will forthwith inform Mekon of such intention so that The Customer and Mekon can assess the impact on products listed on the Support Certificate. If the provision of an Upgrade would lead to an unreasonably high effort for Mekon, The Customer and Mekon will enter into discussions to find a reasonable resolution.

New releases will be provided only for operating systems, database management software and application software or combinations thereof that have been certified by their respective manufacturers.

Contact details for Mekon are listed on the Support Certificate.

(2) Support

Mekon will provide Support from the Mekon offices in London during contracted business hours on the products listed on the Support Certificate. Mekon can decide to provide On-site Support at its sole option.

Contact for Support will be by email, telephone, fax or optional web interface, quoting The Customer agreement number. A Support Call will be logged and a telephoned or written response will be provided to attempt either to answer the Support Call or agree plans with The Customer representatives that will extend the time for resolution of the problem to enable further investigations to continue.

Email is the preferred method for support, assisting in building a history of Support Calls which can be referred back to. The process of constructing a support question by email helps to break it down into logical steps and saves time in identifying the solution and therefore responding to The Customer.

In the event that Mekon support personnel are unable to provide a solution to a Support Call, Mekon will log the problem with the software author or internal developers and make every effort to resolve the problem.

At least a six monthly review of the service provided by Mekon will be carried out. This will include a Client satisfaction questionnaire (to be provided by Mekon for completion by The Customer).

1 Support Time

Unlimited support issue can be logged. All support calls have one (1) hours response time.

2 Inclusions

(1) Email support

This support contract entitles The Customer to Support by sending Support Calls using email. These are checked on an hourly basis.

Priority will be given to email Support Calls.

Additional material relating to the Support Calls may be requested to help resolve the problem.

(2) Fax support

This support contract entitles The Customer to Support by sending Support Calls using fax. These are checked on an hourly basis. Replies to fax's may be made by email.

(3) Telephone Support

This support contract entitles The Customer to Support by calling the Mekon Customer Support telephone number listed on the Support Certificate.

A detailed message will be taken by the support administrator for all telephone support to log the call and identify the relevant Mekon expert. Replies to telephone calls may be made by email.

(4) Client Reporting and Issues Network (Optional Service)

CRAIN is an optional service of the support contract. It entitles The Customer to support via a Web Interface. This facility allows customers to log issues regarding Mekon applications. Customers can then view the status and progress of these issues, plus additional product information such as release dates, latest updates and fixes, Conference details, etc. Information submitted to CRAIN will be sent to the Mekon Customer Support and Development Team.

Replies to CRAIN calls may be made by email.

(5) Consultancy

Consultancy is provided using email, fax or telephone at the discretion of Mekon.

(6) Site attendance

This support contract entitles The Customer to on-site visits at an additional charge subject to any annual increase to be notified in accordance with article 19(2) of this Agreement. Travelling expenses are charged at cost to The Customer.

In the event that attendance at The Customer site is necessary to rectify a problem, arrangements will be made by email to the support address. Such on-site attendance will include the service of Consultancy where required.

It will be at the sole discretion of The Customer whether to instruct Mekon to carry out any on-site visits but, in the event that such instructions are given, the terms of this Agreement shall apply to on-site visits save where the context does not permit. In the event of Mekon recommending an on-site visit in writing and The Customer not instructing Mekon to carry out such an on-site visit, Mekon reserves the right in its sole discretion to decline to provide assistance to The Customer in the event of any recurrence of the particular problem during the term of this Agreement.

(7) On-site Support Meeting (Optional Service)

This support contract entitles The Customer to an on-site meeting with the Mekon Support Manager every six months. This meeting allows The Customer to raise any problems/issues with Mekon applications or the support contract. If needed, a member of the Development or Sales Team will also attend the meeting to discuss any relevant issues.

3 Exclusions

The following services are specifically excluded from this contract:

(1) Customisation

This support contract covers the software specified on the Support Certificate in its "as installed" form only. Any problems arising from customisation of the software by The Customer will be dealt with at Mekon's discretion.

(2) Operating system

Mekon are not responsible for problems caused by defective or incompatible operating systems.

(3) Hardware

Mekon are not responsible for problems caused by defective or incompatible Hardware.

(4) Mekon Ltd. will not be responsible for any of the following costs:

Consequential loss as a result of failure or misuse of the software.

Costs incurred by The Customer resulting from delays in adjusting or replacing Software which are outside Mekon's direct control.

4 The Customer Obligations

(1) Operation

The customer will keep and operate the Software in a proper and prudent manner and ensure that only competent trained employees are allowed to operate it.

(2) Fees

The annual fee is subject to review each year on the anniversary of the effective date (Mekon undertake to ensure that any review shall only increase the fee charged if it is reasonable to do so, having regard to all the circumstances pertaining at the time. It is not likely that any such review would increase the fee charged by more than 10%). The Customer will be notified by Mekon in writing two months before the current period of the Agreement is due to expire if any increase is to be made.

(3) Services of Notices

Any written notice or other written information required or authorised by this Agreement to be given by either party to the other may be given by hand or sent (by first class post, facsimile transmission or email) to the other party at the relevant address, fax number or email address as stated in this Agreement or such other address or number as the recipient may have notified the sender from time to time.