

Definitions

- a) 'AGREEMENT' the Software Support Agreement between Extra Resource Limited, Registered in England & Wales No 3715580, VAT Registration No GB-721 4244 70, (trading as Document Genetics) 'DG' and the 'Customer' as set forth herein.
- b) 'SOFTWARE SUPPORT' means the consultancy services provided by DG to the Customer under 'Scope of Services'.
- c) 'PREVAILING RATE' shall be the rate charged for the time being by DG for Software Support.
- d) 'CUSTOMER' means the person, company or entity specified in the invoices raised for receiving software support from DG.
- e) 'INTELLECTUAL PROPERTY RIGHTS' means all patents, rights to inventions, copyright and related rights, trade marks and services marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off and 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.

1. Terms

- 1.1. This Agreement shall become effective on the date upon which it is accepted by DG. Unless agreed in writing otherwise, this Agreement shall remain in full force and effect for a one (1) year period at the Prevailing Rate charged by DG and shall be automatically renewed for a further period of one year, unless either party gives written notice at least ninety (90) days prior to the renewal date that it does not wish to continue with this Agreement.
- 1.2. Unless agreed in writing otherwise, the Customer shall pay in advance a support fee at the Prevailing Rate in the first year. Subject to Clause 1.1, subsequent years will be automatically renewed and paid by the Customer in advance at the same rate as the previous year plus a price increase calculated as the Consumer Price Index in the previous January, + 2%.
- 1.3. In consideration of the rights and obligations contained in this Agreement, the Customer shall pay the support fee without any right of deduction or set-off.

2. Scope of Services

- 2.1 DG's Software Support is limited to support during DG's regular working hours (09.00 to 17.00, Monday to Friday, excluding Public Holidays). Telephone support shall consist of advice and guidance to the Customer on the operation of the software, and any other matters relating to software supplied by DG and covered by this Agreement.
- 2.2 Request for support should be sent to support@document-genetics.co.uk or call 01604 671177.
- 2.3 Additional services may be provided, or the telephone support service offered out of normal office hours by DG at a rate to be agreed between the parties.
- 2.4 Minor revisions and technical fixes, plus, major software versions and upgrades, subject to availability from the software author(s), manufacturers, or distributors.
- 2.5 Notwithstanding the Software Support provided by DG under this Agreement, the Customer is reminded that no representation and/or warranty is given by DG guaranteeing that a solution will be found to any problem brought to its attention. DG's obligations are limited to the provision of advice and guidance only.
- 2.6 At the discretion of the DG helpdesk support can also be provided by using remote access software, either using a product specified by the Customer or using DG's preferred method, DG will only do so to provide assistance and does so at the Customers risk.

3. Customer Obligations

- 3.1. As a condition of receiving the support services set out in this Agreement, the Customer must:
 - a) promptly load and test all software provided by DG.
 - b) perform all reasonable software tests requested by DG in the event of software problems.
 - c) provide on request written reports of software problems by telephone, fax, e-mail or post.
 - d) provide DG with complete co-operation in resolving any software problems;
 - e) use the software in accordance with the suppliers' operating instructions;
 - f) limit access to the telephone help line to designated Customer staff who have received appropriate training;
 - g) ensure that only properly trained employees operate or use the system in accordance with the operating instructions;
 - h) not make any modifications or additions to the software or system, except with DG's prior written consent;
 - i) agree to treat as proprietary to DG and confidential all information, data, drawings, specifications, documentation, software listings, source or object code which DG may have imparted and may from time to time impart to the Customer relating to the software support services. The Customer hereby agrees that it shall use the same solely in accordance with the provisions of this Agreement and that it shall not at any time during or after the expiry or termination of this Agreement disclose the same, whether directly or indirectly to any third party without DG's prior written consent.
 - j) ensure that, where mutually agreed, remote access to the Customer's computer systems is available to DG.

4. Services not covered by this Agreement

- 4.1. Problems and questions arising, in the reasonable opinion of DG, from operation of the software outside its design specification.
- 4.2. Support services provided outside DG's regular working hours, and on-site service or personal consultations provided at any time.
- 4.3. Services in respect of defects or errors resulting from any modifications or enhancements to the software not made by DG or made without the prior written consent or resulting from incorrect use of the software.
- 4.4. DG is not obliged to support the software if the Customer is not using the current versions of the operating system software as specified by DG from time to time or if the Customer fails to maintain the software at DG's specified release level (unless expressly agreed in advance by DG).
- 4.5. DG will only undertake responsibility for software on a designated hardware system if the hardware is covered by this Agreement or is the subject of a separate hardware maintenance agreement between the manufacturer of the hardware and a reputable third-party maintainer.
- 4.6. Installation of major new software versions, minor versions, or technical fixes.
- 4.7. DG is not obliged to support the software if malfunctions are due to incorrect use of the software or for any reason external to the software including, but not limited to, failure or fluctuation of electrical supplies, hardware failures, accidents or natural disasters.
- 4.8. Should the authors of the software make such changes that require 3rd party modules to be updated or purchased, the Customer must purchase or upgrade such software or risk losing functionality as a result. No claim can be made against DG or the appropriate author for reimbursement.

5. Charges

- 5.1. Unless agreed in writing otherwise, the annual Software Support charge shall be invoiced once each year and shall be paid by the Customer on or before the first day of the Agreement or immediately upon receipt of the invoice, whichever is later.
 - 5.1.1 If the said invoice is not paid on or before the first day of the Agreement, DG reserves the right to charge the Customer a £295 reconnection fee.
- 5.2. DG reserves the right to charge the Customer for the supply of media and all taxes, duty, handling, and shipping costs relating to the supply of software upgrades which will be transferred at cost.
- 5.3. DG reserves the right to charge the Customer the current daily rate at the time for time spent investigating problems which fall outside Software Support as defined in this Agreement.
- 5.4. In consideration of the rights and obligations contained in this Agreement, The Customer shall pay the Fee without any right of deduction or set-off.

6. Limitation of Liability

- 6.1. Nothing in this Agreement shall limit or exclude the liability of either Party in respect of death or personal injury resulting from negligent acts or omissions or for fraud or breach of confidentiality obligations or any other liability which cannot be excluded or limited at law.
- 6.2. Neither Party shall be liable to the other Party for any:
 - 6.2.1. loss of profit; or
 - 6.2.2. loss of business and/or goodwill;
 - 6.2.3. loss of anticipated savings; or
 - 6.2.4. loss or corruption of data or information; or
 - 6.2.5. any special, indirect, or consequential loss, costs, damages, charges or expenses.
- 6.3. Save for the indemnities granted under this Agreement, which shall be unlimited, and subject to Clauses 6.1 and 6.2, the aggregate liability of DG in respect of any claim, loss, damage, costs or expenses arising out of the performance of its obligations under this Agreement (whether in contract, tort (including negligence or breach of statutory duty) or otherwise) shall be limited to the total value of the recurring Charges paid or payable by the Client to DG pursuant to this Agreement in the twelve (12) month period immediately preceding the relevant claim or £1,000,000 whichever is the lower.
- 6.4. DG shall not be liable for any damages whatsoever to the Client's Hardware or property at the Client Premises resulting from the installation, configuration, repair, or removal of Hardware carried out by DG or by its contractors unless such damage is caused by DG's wilful misconduct or negligence and subject always to the limitations of liability in Clause 6.3.
- 6.5. Except as expressly set out in this Agreement, all representations, warranties, terms and undertakings, express or implied by statute, common law or otherwise (including those relating to quality and fitness for purpose) are hereby expressly excluded to the extent permitted by applicable law.
- 6.6. The Customer will indemnify and defend DG and its employees in respect of any third-party claims which arise from any performance by DG carried out on the instructions of the Customer or the Customer's authorised representatives.
- 6.7. The Customer will also indemnify DG in respect of any losses or expenses incurred by DG as a result of the Customer's failure to maintain adequate current licences for any third-party software which DG needs to use.

7. Data Protection

The Customer and DG further agree to handle all personal data in accordance with all applicable data protection legislation and in particular the UK Data Protection Act 2018 or any subsequent amendment thereto, or replacement legislation under English law. DG's Data Protection policy is available here> <https://www.document-genetics.co.uk/Document-Genetics-Data-Protection-Policy>

8. Miscellaneous

- 8.6. If any provision of this Agreement shall be held invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
- 8.7. Failure by the Customer to perform an obligation or covenant under this Agreement shall constitute a default. In the event of a default, DG may at its sole discretion terminate this Agreement immediately upon written notice to the Customer.
- 8.8. With regard to any dispute which give rise to the Customer commencing legal proceedings against DG in connection with or arising out of this Agreement, this Agreement is governed by the laws of England and Wales to the exclusive jurisdiction of whose courts the parties submit, but this shall not prevent DG from starting proceedings in any jurisdiction where the Customer are carrying on business.
- 8.9. The Customer shall not assign or otherwise transfer all or part of this Agreement without written consent of DG.
- 8.10. Force Majeure: DG shall not be responsible for any failure to provide software support services or perform any obligation under this Agreement because of any act of God, strike, lock-outs or other industrial disputes (whether involving the workforce of DG (or any other party) or compliance with any law of governmental or any other order, rule, regulation or direction, accident, fire, flood, storm or default of suppliers, work stoppage, war, riot or civil commotion, equipment or facilities shortages which are being experienced by providers of telecommunication services generally, or other similar events beyond its reasonable control.
- 8.11. All Intellectual Property Rights in the Software and in the Software Services shall remain with DG and no interest or ownership therein is conveyed to the Customer under this Agreement. No right to modify, adapt, or translate the Software or create derivative works there from is granted to the Customer. Nothing in this Agreement shall be construed to mean, by inference or otherwise, that the Customer have any right to obtain source code comprised within the Software. The Intellectual Property Rights in all source code within the Software remains with DG.
- 8.12. Whereby any custom modifications are made to the Software, whether charged to the Customer or provided free of charge, the Intellectual Property Rights in such modifications shall remain entirely with DG.
- 8.13. We may occasionally monitor and record calls made to or by us for the purpose of training and improving customer care services, including complaint handling.