



SOFTWARE SUPPORT and SERVICES AGREEMENT

This Agreement is made the day of 2

Between: AXIENT PTY LIMITED (ACN 090 510 848) of Level 6, 28 Clarke St, NSW 2065.

(the Supplier)

And: CUSTOMER of <<, Sydney NSW 2000>>

(the Customer)

for the support of computer software.

Whereas:

the Customer is the licensee of certain computer software.

1. the Customer seeks support services in respect of the software.
2. the Supplier has offered to provide the Customer with support services in respect of the software, subject to the terms set out below.

It is hereby agreed as follows.

1. Definitions

In this Agreement, unless the contrary intention appears:

“Additional Charge” means a charge in accordance with the Supplier's standard rates in effect from time to time.

“Agreement” means this agreement for the provision of the Support Services.

“Commencement Date” means the date so specified in Schedule 1.

“Confidential Information” means the confidential information of a Party which relates to the subject matter of this Agreement and includes information relating to:

- (a) the design, specifications and content of the Supported Software
- (b) the personnel, policies or business strategies of the Supplier
- (c) the terms upon which the Support Services are offered pursuant to this Agreement.

“Force Majeure” means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances shall include but shall not be limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) strikes.



“Current Maintenance” – a defined period of time from the release date of the supported software.

- (a) Product Patches and/or Releases
- (b) The ability to request enhancements or new features and report Errors
- (c) Request root cause analysis

“Initial Term” means the period so specified in Schedule 1.

“OT” means OpenText Corporation.

“Party” means either the Supplier or the Customer as the context dictates.

“Restraint Period” means the period, specified in Schedule 1, during which a Party must refrain from soliciting from employment any person who is employed or contracted by the other Party.

“Resolution” refers to taking the necessary action to correct an Error such that the Supported Software is operating in accordance with the Documentation. This could include, but is not limited to, creating a new or applying an existing Workaround or Update.

“Response Time” refers to the amount of time that is measured from the time a Support Request is received by the Supplier until the time when a technically qualified member of the Supplier responds to you for the purpose of commencing the work necessary to achieve Resolution of the Support Request. The response time for an SR is determined by its Classification, the Support Plan the customer subscribes to, and the time when the SR was submitted to the Supplier.

“Schedule” means a Schedule to this Agreement.

“**Service Level**” means Response Time, Priority, Impact, Urgency assigned to the SR.

“Site” means the location specified in Schedule 1, being the site at which any on-site Support Services are to be provided by the Supplier pursuant to this Agreement.

“Software Owner” means the owner of Intellectual Property Rights in the Support Software, where such owner is a person other than the Supplier.

“**Software Specification**” means the specification for the Software set out in the Supported Software Administration Guide.

“Supplier's Normal Business Hours” means the time period so specified in Schedule 1.

“**Support Plan**” means the Plan in Schedule 3 purchased by the Customer for the Supported Software.

“Supplier's Service Centre” means the site designated by the Supplier from time to time from which the Supplier can most conveniently and practicably provide off-site Support Services.

“Support Request” or “SR” means the initiation of a record or “ticket” documenting the details of the service request or incident.

“Support Charges” means the charges specified in Schedule 2, which are payable by the Customer to the Supplier in respect of the Support Plan, specified in Schedule 3.

“Support Services” means the support services provided by the Supplier to the Customer pursuant to this Agreement in respect of the Supported Software.



“Supported Software” means the software which is the subject of the Support Services.

“Sustaining Maintenance” refers to the stage of the product lifecycle following the expiration of Current Maintenance. During this phase of the product support lifecycle, the following Support Services may be available:

- (a) Unlimited number of Support Request submissions
- (b) Supplier will use commercially reasonable endeavors to respond to and provide a Resolution of an SR.

“Update” shall mean Product Patch or Release of the Supported Software, which will be provided by the Supplier to the customer in accordance with this Agreement.

“Workaround” is a manner of addressing an Error by bypassing the problem in the system (software technical bypass). A Workaround is typically a temporary fix the Supplier and/or OT may subsequently correct the Error in the Supported Software through a Product Patch or an Update.

2. Interpretation

In this Agreement, unless the contrary intention appears:

- (a) the clause headings are for ease of reference only and shall not be relevant to interpretation
- (b) a reference to a clause number is a reference to its subclauses
- (c) words in the singular number include the plural and vice versa
- (d) words importing a gender include any other gender
- (e) a reference to a person includes bodies corporate and unincorporated associations and partnerships
- (f) a reference to a clause is a reference to a clause or subclause of this Agreement
- (g) a reference to a subclause is a reference to a subclause of the clause in which that reference is made
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings
- (i) a reference to a Schedule includes a reference to any part of that Schedule which is incorporated by reference
- (j) the recitals to this Agreement do not form part of the Agreement
- (k) monetary references are references to Australian currency.

3. Duration

3.1. The Support Services shall be provided by the Supplier to the Customer for the Initial Term.

3.2. Subject to Schedule 1, this Agreement may be renewed for subsequent terms of similar duration to the Initial Term. The Customer shall provide at least ninety (90) days notice in writing prior to the expiry of the Initial Term or any subsequent term if it wishes to renew the Agreement pursuant to this Schedule 1.



- 3.3. Renewal of this Agreement pursuant to Schedule 1 is subject to the consent of the Supplier, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Supplier may require an adjustment of the Support Charges as a condition of providing its consent to a renewal of this Agreement for a further term.
- 3.4. Subject to Schedule 1, the Customer shall provide at least ninety (90) days notice in writing prior to the expiry of the Initial Term or any subsequent term, if:
 - (a) the customer does not wish to renew this agreement
 - (b) the customer wishes to amend their Supported Software licenses; or
 - (c) the Supplier may then at its discretion make an Additional Charge equivalent to the value of ninety (90) days of the Support Charge in respect to the Support Plan

4. Support Services

- 4.1. The Supplier shall perform such services as it considers reasonable to ensure the Supported Software remains in substantial conformity with the software specification. Such support shall, at the sole option of the Supplier, take the form of:
 - (a) telephone advice
 - (b) email advice
 - (c) error correction or provision of a plan by means of remote technical support
 - (d) on-site attendance followed by such advice, a plan, programming or re-configuration as the Supplier considers necessary
 - (e) such services as the Supplier considers are more effectively provided off-site.
- 4.2. The Supplier shall provide the support services in response to a report by the Customer of a suspected defect or error in the Supported Software, which defect, or error allegedly causes the Supported Software to deviate from the software specification.

5. Support Availability

- 5.1. The Supplier shall provide the Support Services based on the applicable hours of the Support Plan purchased.
- 5.2. Immediately after making a request for Support Services which may involve error correction or program modification, the Customer shall give the Supplier a documented example of the defect or error which it alleges prevents conformity of the Supported Software with the software specification.
- 5.3. The Customer shall, if so requested by the Supplier, give the Supplier a listing of output and any other data which the Supplier requires in order to reproduce operating conditions similar to those present when any alleged defect or error in the Supported Software was discovered.



6. Service Level

6.1. Support Request Classification

6.1.1. Each SR will be classified by the Supplier as:

- (a) Critical; the performance issue reported causes the Supported Software to be functionally inoperable (entire system is down) and prevents the Supported Software from being used in Production Mode, or
- (b) Serious; the performance issue reported significantly degrades the performance of the Supported Software or materially restricts your use of the Supported Software in a Production Mode (system is operational, but performance may be impacted), or
- (c) Normal; the performance issue reported is a question regarding:
 - (i) end use;
 - (ii) (configuration of the Supported Software or a minor defect in the Supported Software that does not materially restrict your use of the Supported Software in a Production Mode;
 - (iii) an enhancement, or
 - (iv) related to questions on or configuration of the Supported Software.
- (d) As a rule, SRs for non-production systems are Classified as Normal.

6.2. Support Request Classification Response Times

- (a) Response Times, measured in hours, are targets and cannot be guaranteed in all circumstances by the Supplier

SR Classification	Response Time	Plan Time	Resolution Time
Critical	1 hour	1 hour	4 hour
Serious	2 hour	4 hour	16 hour
Normal	4 hour	8 hour	40 hour

6.3. Resolution of Support Request

- 6.3.1. The Supplier shall attempt to address each Support Request, regardless of classification, through the offering of technical advice, by locating an existing workaround or by creating a new workaround using the process described below. In the event of an outage and depending on the cause and duration of the outage, the Supplier may require the customer to restore from backup in order to return the system to a production state.
- 6.3.2. Once production service is restored, the Support Request classification is downgraded, and root cause analysis may continue, as requested, during regular support hours of operation.

6.3.3. Any software and/or hardware provided by and installed by the Supplier and as agreed to by the customer to assist with the delivery of the Support Services and not purchased by the customer must be removed and returned to the Supplier upon resolution of the incident.

6.4. Definition of an Incident

6.4.1. An incident is one user-defined problem seeking resolution. The single problem must be related to the original intent and design of the software and, does not include subsequent problems that are caused by or related to the original problem.

6.4.2. A problem is:

- (a) A description of the desired functionality the customer wishes to achieve, or
- (b) The step-by-step process to reproduce a single undesired event, or
- (c) Any and all exact error messages and description of incorrect behaviour.

6.4.3. A resolution to a problem is:

- (a) An explanation of potential reasons for the problematic behaviour, OR
- (b) Suggested solution(s), including:
 - (i) The customer has received advice on using the functionality of the software.
 - (ii) The customer has received advice on rectifying a problem with the operating environment associated with the implementation of the software.
 - (iii) The customer has received advice on the actions that need to be taken by the customer to recover from a data or database corruption problem.
 - (iv) The customer has received advice that the problem relates to hardware and that the customer needs to raise a call with their hardware supplier or, if hardware is covered by a hardware maintenance plan, initiate the hardware swap-out process.
 - (v) The customer has been advised of a software maintenance patch, which once applied, will resolve the problem.
 - (vi) The problem relates to a known issue that has been corrected in a subsequent release of the software (the implication being that the customer needs to draw up plans to upgrade their release of the software).
 - (vii) The problem relates to a known issue that should be incorporated in a future maintenance release of the software. In the meantime, the customer has been provided with advice on the most appropriate workaround in order to overcome the immediate problem.
 - (viii) An incident is considered "open" when the Supplier responds to a SR.
 - (ix) An incident is considered "closed" when Supplier presents a resolution to the problem and the Customer is in agreement with the resolution.



7. Exclusions

- 7.1. Support Services to be provided by the Supplier under this Agreement do not include:
- (a) correction of errors or defects caused by operation of the Supported Software in a manner other than that currently specified by the Supplier or the Software Owner
 - (b) correction of bug fixes, technical faults, errors and defects not corrected by the Software Owner
 - (c) correction of errors or defects caused by modification, revision, variation, translation or alteration of the Supported Software not authorised by the Supplier or the Software Owner
 - (d) correction of errors or defects caused by the use of the Supported Software by a person not authorized by the Supplier or the Software Owner
 - (e) correction of errors caused in whole or in part by the use of computer programs other than the Supported Software
 - (f) correction of errors caused by the failure of the Customer to provide suitably qualified and adequately trained operating and programming staff for the operation of the Supported Software
 - (g) training of operating or programming staff
 - (h) rectification of operator errors
 - (i) rectification of errors caused by incorrect use of the Supported Software
 - (j) rectification of errors caused by an equipment fault
 - (k) equipment maintenance
 - (l) diagnosis or rectification of faults not associated with the Supported Software
 - (m) furnishing or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by the Supplier or the Software Owner
 - (n) correction of errors arising directly or indirectly out of the Customer's failure to comply with this Agreement or any other agreement with the Supplier or the Software Owner
 - (o) correction of errors or defects which are the subject of a warranty under another Agreement.
- 7.2. If so, specified in this Agreement, the Support Services shall include the provision of updates and new releases of the Supported Software.
- 7.3. If the Customer so requests in writing, the Supplier may at its option provide any of the Support Services referred to in Schedule 3. The Supplier may make an Additional Charge for providing such services.

8. Access

- 8.1. The Customer shall, where relevant, ensure the Supplier's support personnel have full and safe on-site access to the Supported Software and the relevant equipment at all reasonable times for the purpose of providing the Support Services. The Customer shall also ensure that the Supplier's support personnel are provided with all information, facilities, assistance and accessories reasonably required by the



Supplier to enable the Supplier to comply with its obligations under this Agreement.

- 8.2. If reasonably requested by the Supplier, the Customer shall provide a suitably qualified or informed representation to accompany the Supplier's personnel and to provide such advice or assistance to those personnel as may be necessary in order to enable the Supplier to access the Supported Software and relevant equipment and to otherwise effectively perform the Support Services.

9. Updates and New Releases

- 9.1. If so, specified in Schedule 1, the Support Service shall include the provision of updates and new releases of the Supported Software.
- 9.2. When reasonably required to do so by the Customer, the Supplier shall demonstrate the extent to which an update or new release is capable of providing functions and performance specified in the Service Specifications. The Supplier may make an Additional Charge in respect of any such demonstration.
- 9.3. In the event that the Customer maintains a version of the Supported Software that is in Sustaining Maintenance stage, the Supplier may decline to continue Support Services.
- 9.4. Where the Customer accepts an update or new release this Agreement applies in all respects to that update or new release to the extent that it is incorporated or replaces the Support Software.

10. Support Charges

- 10.1. The Customer shall pay the Support Charges at the rate and in the manner specified in Schedule 2.
- 10.2. If the Customer disputes the whole or any portion of the allowed claim in an invoice submitted by the Supplier, the Customer shall pay the portion of the amount stated in the invoice which is not in dispute and shall notify the Supplier in writing (within thirty (30) days of receipt of invoice) of the reasons for disputing the remainder of the invoice.
- 10.3. If the Supplier is requested to perform services in addition to those covered by this Agreement and the Supplier agrees to perform such additional services, then the Supplier shall be entitled to make an Additional Charge.
- 10.4. The Customer shall pay the Supplier interest on any amount due and not paid by the Customer within the time required by this Agreement at the rate of interest specified in Schedule 2.
- 10.5. The Support Charges are exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the supply of the Support Services. Without limiting the foregoing, the Customer shall be liable for any new taxes, duties or charges imposed subsequent to the Commencement Date in respect of the Support Services.



11. Confidentiality

- 11.1. A Party shall not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.
- 11.2. A Party shall not be in breach of Schedule 1 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
- 11.3. Each Party shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other Party's Confidential Information.
- 11.4. Notwithstanding any other provision of this clause, each party may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- 11.5. This clause shall survive the termination of this Agreement.

12. Employees and contractors

- 12.1. During the Restraint Period, neither Party shall solicit for employment, either directly or indirectly, any person who is employed or contracted by the other Party.
- 12.2. A Party shall promptly advise the other Party if a person who is employed or contracted by the other Party seeks to be employed or contracted by the first mentioned Party prior to the expiration of the Restraint Period.

13. Intellectual property rights

- 13.1. The Supplier shall indemnify the Customer against liability under any final judgment in proceedings brought by a third party against the Customer which determine that the Customer's use of modifications effected by the Supplier to the Supported Software constitutes an infringement in Australia of any Intellectual Property Rights in the Supported Software.
- 13.2. The Supplier shall not be required to indemnify the Customer unless the Customer:
 - (a) notifies the Supplier in writing as soon as practicable of any infringement, suspected infringement or alleged infringement
 - (b) gives the Supplier the option to conduct the defense of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings
 - (c) provides the Supplier with reasonable assistance in conducting the defense of such a claim
 - (d) permits the Supplier to modify, alter or substitute the infringing part of the modifications to the Supported Software at its own expense in order to avoid continuing infringement, or authorizes the Supplier to procure for the Customer the authority to continue the use and possession of the infringing part of the modifications.
- 13.3. The Supplier shall not indemnify the Customer to the extent that an infringement, suspected infringement or alleged infringement arises from:
 - (a) use of the Supported Software in combination by any means and in any



- form with other goods not specifically approved by the Supplier
 - (b) use of the Supported Software in a manner or for a purpose not reasonably contemplated or not authorized by the Supplier
 - (c) modification or alteration of the Supported Software without the prior written consent of the Supplier.
- 13.4. In the event that proceedings are brought or threatened by a third party against the Customer alleging that the Customer's use of modifications effected by the Supplier to the Supported Software constitutes an infringement of Intellectual Property Rights, the Supplier may at its option and at its own expense conduct the defense of such proceedings. The Customer shall provide all necessary co-operation, information and assistance to the Supplier in the conduct of the defense of such proceedings.
- 13.5. In the event that proceedings are brought or threatened by a third party against the Customer alleging that the Customer's use of modifications effected by the Supplier to the Supported Software constitutes an infringement of Intellectual Property Rights, the Supplier may at its option and at its own expense conduct the defense of such proceedings. The Customer shall provide all necessary co-operation, information and assistance to the Supplier in the conduct of the defense of such proceedings.
- 13.6. In the event that proceedings are brought or threatened by a third party against the Customer alleging that the Customer's use of modifications effected by the Supplier to the Supported Software constitutes an infringement of Intellectual Property Rights, the Supplier may at its option and at its own expense conduct the defense of such proceedings. The Customer shall provide all necessary co-operation, information and assistance to the Supplier in the conduct of the defense of such proceedings.
- 13.7. The Customer shall indemnify the Supplier against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party.
- 14. Implied Terms
 - 14.1. Subject to any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.
 - 14.2. Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this Agreement. However, the liability of the Supplier for any breach of such condition or warranty shall be limited, at the option of the Supplier, to one or more of the following:
 - (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods
 - (ii) the repair of such goods
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods or
 - (iv) the payment of the cost of having the goods repaired.
 - (b) if the breach relates to services:
 - (i) the supplying of the services again or
 - (ii) the payment of the cost of having the services supplied again.



15. Liability of Supplier

- 15.1. Except in relation to liability for damage to property, personal injury (including sickness and death), breach of confidentiality, the Supplier shall be under no liability to the Customer in respect of any consequential loss or damage which may be suffered or incurred or which may arise directly or indirectly in respect of goods or services supplied pursuant to this Agreement.
- 15.2. The Customer warrants that it has not relied on any representation made by the Supplier which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by the Supplier.
- 15.3. The Customer acknowledges that to the extent the Supplier has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.
- 15.4. The Customer shall at all times indemnify and hold harmless the Supplier and its officers, employees and agents (those indemnified) from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:
 - (a) a breach by the Customer of its obligations under this Agreement; or
 - (b) any willful, unlawful or negligent act or omission of the Customer.
- 15.5. The Supplier shall at all times indemnify and hold harmless the Customer and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:
 - (a) a breach by the Supplier of its obligations under this Agreement; or
 - (b) any willful, unlawful or negligent act or omission of the Supplier.

16. Termination

- 16.1. Without limiting the generality of any other clause in this Agreement, either party may terminate this Agreement immediately by notice in writing if:
 - (a) a party is in breach of any term of this Agreement and such breach is not remedied within thirty (30) days of it notifying the other party
 - (b) the other party for any reason destroys, disposes of or loses custody of the Supported Software
 - (c) the other party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration
 - (d) the other party, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving
 - (e) the other party, being a natural person, dies; or



- (f) the other party ceases or threatens to cease conducting its business in the normal manner.
- 16.2. If notice is given to the Customer pursuant to Schedule 1, the Supplier may, in addition to terminating the Agreement:
 - (a) repossess any of its property in the possession, custody or control of the Customer
 - (b) retain any moneys paid
 - (c) charge a reasonable sum for work performed in respect of which work no sum has been previously charged
 - (d) be regarded as discharged from any further obligations under this Agreement, and
 - (e) pursue any additional or alternative remedies provided by law.
- 17. Force majeure
 - 17.1. Neither Party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure.
 - 17.2. If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.
 - 17.3. If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds ninety (90) days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.
- 18. Sub-contracts
 - 18.1. The Supplier may sub-contract for the performance of this Agreement or any part of this Agreement to the extent so specified in Schedule 1 or upon obtaining the Customer's prior written consent.
- 19. Entire agreement
 - 19.1. This Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.
- 20. Precedence
 - 20.1. The documents comprising this Agreement shall be read in the following order of precedence:
 - (a) the clauses of this Agreement
 - (b) the Schedules.
 - 20.2. Where any conflict occurs between the provisions contained in two or more of the documents forming this Agreement, the document lower in the order of precedence shall where possible be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions shall be severed



from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

21. Assignment and novation

21.1. The benefit of this Agreement shall not be assigned by the Customer without the Supplier's written consent.

21.2. The Supplier will not unreasonably withheld such consent.

22. Waiver

22.1. No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party.

22.2. A waiver by the Supplier will not prejudice its rights in respect of any subsequent breach of the Agreement by the Customer.

22.3. Any failure by the Supplier to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by the Supplier to the Customer, will not be construed as a waiver of the Supplier's rights under this Agreement.

23. Variation

23.1. The provisions of this Agreement, shall not be varied, except by agreement in writing signed by the Parties.

23.2. If either Party wishes to vary the Agreement, the proposing Party shall submit a copy of the proposed variations to the other Party ("the receiving Party"), specifying a reasonable period in which the receiving Party is to provide written notice of acceptance or rejection of the proposal.

23.3. If the receiving Party accepts the variations, the Agreement shall be deemed to be so amended from the date of acceptance.

23.4. If the receiving Party rejects the proposed variations, each Party shall perform the Agreement in accordance with the unvaried terms.

24. Disputes

24.1. Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the Parties or their representatives shall be submitted to arbitration in accordance with the Rules for the Conduct of Commercial Arbitrations for the time being of the Institute of Arbitrators Australia. During such arbitration, both Parties may be legally represented.

24.2. Prior to referring a matter to arbitration the Parties shall:

- (a) formally refer the dispute to their respective contract managers for consideration
- (b) if the respective contract managers are unable to resolve the dispute after five (5) days (or such other period as is agreed between the



Parties) from the date of referral, refer the dispute to the respective chief executive officers or senior executives of each Party, and
(c) in good faith explore the prospect of mediation.

24.3. Nothing in this clause shall prevent a Party from seeking urgent equitable relief before an appropriate court.

25. Supplier's rights

25.1. Any express statement of a right of the Supplier under this Agreement is without prejudice to any other right of the Supplier expressly stated in this Agreement or existing at law.

26. Survival of agreement

26.1. Subject to any provision to the contrary, this Agreement shall inure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but shall not inure to the benefit of any other persons.

26.2. The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

27. Severability

27.1. If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

28. Governing law

28.1. This Agreement will be governed by and construed according to the law of the jurisdiction specified in the State of New South Wales.

29. Notices

29.1. Notices under this agreement may be delivered by hand, by mail or by facsimile to the addresses specified in Schedule 1.

29.2. Notice will be deemed given:

- (a) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party
- (b) in the case of posting, three days after dispatch
- (c) in the case of facsimile, upon receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission.



30. Execution

30.1. This Agreement may be executed in counterparts by the respective Parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement, provided that this Agreement shall be of no force and effect until the counterparts are exchanged.

Executed by the Parties

Signed for and on behalf of the Customer by	
Name of Authorised representative	
Signed by authorised representative, in the presence of	
Name of Witness	

Signed for and on behalf of the Supplier by	
Name of Authorised representative	
Signed by authorized representative, in the presence of	
Name of Witness	



SCHEDULES

Schedule 1 – Contract Details

Authorised Subcontracts	
Commencement Date	
Initial Term	12 months
Notices	Customer
	Supplier
	accounts@axient.com.au
Restraint Period	12 months
Site	
Suppliers Normal Business Hours	8.30am – 5.00pm Monday to Friday excluding NSW and Australian National public holidays.
Supported Software + or Hardware	
Updates and New Released	YES



Schedule 2 – Support Charges

Initial Term	12 Months
Method of Payment	EFT within 30days from Date of Invoice
Penalty Interest Rate	2% above the Reserve Bank cash rate
Support Charge in respect to the Support Plan	As quoted



Schedule 3 – Support Plan

Plan Type	Description
Standard Plan	<p>Access to the Axient service desk to log a ticket for an unlimited number of incidents.</p> <p>Service desk availability Monday - Friday: 8:30 a.m. to 5:00 p.m. in your local time zone excluding NSW and Australian National public holidays.</p> <p>Triage of the incident including fault find and replication using Axient and OpenText lab environments.</p> <p>Provision of documentation from Axient and OpenText knowledge base.</p> <p>The ability to request enhancements or new features and report product bugs.</p> <p>Access to the latest version, service and patch releases.</p>
Premium Plan – all of the Standard Plan plus	<p>After business hours 24 x 7 x 365 access to the Axient service desk to log a ticket for an unlimited number of incidents.</p> <p>A non business hours response SLA.</p> <p>Provision and implementation of the Alerting and Monitoring Service.</p> <p>Quarterly Alerting and Monitoring Service management report.</p>