Data Synergy UK Ltd Software Maintenance and Support Agreement

1 GENERAL TERMS

1.1. Definitions

The following expressions shall have the following meanings: -

"Data Synergy" means Data Synergy UK Ltd, Cooper Buildings, Sheffield Technology Parks, Arundel Street, Sheffield, S1 2NS, UK. Company number 06682095.

"Licensee" means the person, firm or company that has placed an Order.

"Licensed Equipment" means the number of computers specified in the Quotation which are authorised to use the Software.

"Order" means any purchase order issued by the Licensee for software and/or services from Data Synergy.

"Quotation" means any quotation for the supply of Software or Services issued by Data Synergy.

"Services" means the services set out in this Software Maintenance and Support Agreement.

"Site" means the location for which the Software may be used identified in the Quotation/Order.

"Software" means each software program provided by Data Synergy, including software in which Data Synergy has sub-licensing rights, in executable, machine readable, object, printed or interpreted form, including any Software Protection Device and any documentation, modifications, improvements or updates supplied to the Licensee under any Quotation/Order.

"Software Protection Device" means the hardware or software protection key supplied by Data Synergy.

"Software Licence" means the Software Licence supplied separately by Data Synergy.

1.2. Incorporation of Terms

These Terms shall apply to all Software and Services supplied by Data Synergy under any Order placed by the Licensee. In the event of any ambiguity between these terms and the provisions of the Terms and Conditions of Sale and the Software Licence Agreement, the terms of the relevant Agreement shall apply.

2 TERM

The Licensee is required to enter into this Software Maintenance and Support Agreement by placing an Order for it at the same time as placing an Order for the first year of use of the Software Licence at the costs provided in the Quotation. On the anniversary of the delivery of the Software the Licensee may enter into an additional years Software Licence and Support Agreement by placing a purchase order upon Data Synergy. The Licensee will be invoiced for the Services annually in advance.

3 FEES

3.1. The Service Fee will be a sum in accordance with the then current rates charged by Data Synergy.

3.2. Travel and any accommodation expenses for additional services which are not covered by the terms of this Agreement will be charged at Data Synergy's then current rates.

4 PAYMENT

4.1. Without prejudice to the Terms if the Licensee is more than 28 days late in the payment of any sum due to Data Synergy pursuant to this Agreement or any other Agreement between Data Synergy and the Licensee Data Synergy may at its discretion suspend performance under this Agreement or any other related agreements after 10 days from the date of written notice of suspension.

5 DESCRIPTION OF SUPPORT AND MAINTENANCE SERVICES

5.1. Customer Support Services

5.1.1. Data Synergy will provide advice by telephone, letter, or e-mail on the use of the Software.

5.1.2. Data Synergy will use all reasonable endeavours to respond to requests for Software application advice within 3 working days.

5.2. Software Maintenance Services

5.2.1. Data Synergy will provide Software maintenance, which will be limited to the correction of errors in the Software, procedural documents and other basic information, supplied with the Software. The said Software maintenance will be carried out as set out in 5.2.2 and 5.2.4 below.

5.2.2. Data Synergy will periodically provide the Licensee with a report of all significant errors and corrections for the Software covered by this Agreement.

5.2.3. Errors discovered by the Licensee must be reported by a designated representative of the Licensee through the reporting mechanisms by Data Synergy and must include all required supplemental documentation.

5.2.4. Data Synergy will use all reasonable endeavours to respond to the Licensee with an action plan to resolve the problem within 5 working days of an adequately completed Report and production of all required supplemental documentation.

5.3. For the avoidance of all doubt Software Maintenance Services shall not include the diagnosis and rectification of any fault arising from:-

5.3.1. The improper use, operation or neglect of either the Software or the Licensed Equipment;

5.3.2. The modification of the Software or its merger (in whole or in part) with any other software;

5.3.3. Unless otherwise agreed by Data Synergy in writing the use of the Software on equipment other than the Licensed Equipment;

5.3.4. The failure by the Licensee to implement recommendations in respect of the solutions and faults previously advised by Data Synergy;

5.3.5. Any repair, adjustment, alteration or modification of the Software by any person other than Data Synergy without Data Synergy's prior written consent;

5.3.6. Any breach by the Licensee of its obligations under this Agreement or the Licence;

5.3.7. The Licensee's failure to install and use on the Licensed Equipment in substitution for the previous release any new release of the Software within 90 days of receipt of the same;

5.3.8. The use of the Software for a purpose for which it was not designed; or

5.3.9. Specialist advice on the application of the Software or specific engineering applications.

5.4. Data Synergy may on the request of the Licensee provide support notwithstanding that the fault results from any circumstances described in clause 5.3 above or that the support requested is not covered by the terms of this Agreement. Data Synergy shall in such circumstances be entitled to charge for such service at Data Synergy's rates from time to time for work undertaken on a time and materials basis or fixed quote at the discretion of Data Synergy.

5.5. Without prejudice to clauses 5.3 and 5.4 above Data Synergy shall be entitled to levy reasonable charges if support is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Licensee's request to have been unnecessary.

5.6. Software Support Services

Data Synergy agrees to provide the Licensee with the following Software support services with respect to the Software:-

5.6.1. Data Synergy will provide the Licensee with all Software and related documentation for all enhancements (defined as new features, capabilities and operational characteristics) completed and implemented during the term of this Agreement;

5.6.2. Data Synergy reserves the right to terminate software support for specified Software products on 90 days notice. In the event that Software support is terminated for one or more of Data Synergy's Software products covered by this Agreement, this Agreement will automatically terminate as to such Software products and a pro rata proportion of any prepaid charges will be refunded.

6 WARRANTY

6.1. Data Synergy warrants to the Licensee that it will perform the Services provided for in this Agreement with reasonable skill and care.

6.2. The Licensee shall give notice to Data Synergy as soon as it is reasonably able and in any event within 7 days on becoming aware of a breach of warranty.

6.3. Subject to clause 6.4 below Data Synergy shall remedy any breach of the warranty set out in clause 6.1 above by the provision of Services free of charge.

6.4. Data Synergy shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the circumstances described in clauses 5.3 and 5.4 above.

7 TERMINATION

7.1. This Agreement may be terminated on any anniversary of the date of this Agreement by Data Synergy or the Licensee giving at least 30 days written notice to the other party such notice to take effect no sooner than the first anniversary or any subsequent anniversary of this Agreement.

7.2. Data Synergy may terminate this Agreement if the Licensee fails to comply with the Terms or any related agreement between Data Synergy and the Licensee.

7.3. The Licensee may terminate this Agreement if Data Synergy fails to comply with the Terms or any related agreement between Data Synergy and the Licensee provided that Data Synergy has been given 30 days prior written notice during which Data Synergy has failed to correct the breach where such breach is capable of remedy.

7.4. This Agreement shall be terminated with respect to any particular item of Software on the date any such Software Licence expires or the Licence is terminated for any reason.

8 SOFTWARE LICENCE

The Licensee has been granted a licence by Data Synergy in the terms of a separate Software Licence to use Software being supported under this Agreement and acknowledges that any replacements, improvements or additions to that Software provided under this Agreement will be subject to the terms and conditions of the Licence.

9 WAIVER

No waiver by either party of any breach or alteration by the other party of any obligations contained in these Terms, which shall only be effective when in writing and signed by an authorised officer of the party not in default, shall constitute a waiver of any other obligation contained herein.

10 FORCE MAJEURE

Data Synergy shall not be liable and shall be deemed not to be in default for any delay or failure in performance under these Terms resulting from Acts of God, civil or military action, acts of public enemy, war, fire or explosion, earthquake, floods, the elements, strikes, labour or transportation difficulties, inability to obtain export or import licences or any other cause beyond its control.

11 ENTIRE AGREEMENT

These Terms constitutes the entire agreement between the parties with respect to the subject matter hereof and supersede all prior understandings or agreements written or oral regarding such subject matter.

12 CONTROLLING LAW AND SEVERABILITY

12.1. This Agreement shall be governed by and construed in accordance with the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

12.2. If for any reason a court of competent jurisdiction finds any provision of this Agreement or portion thereof to be unenforceable that provision shall be enforced to the maximum extent possible so as to effect the commercial intent of the parties and the remainder of the Agreement shall continue in full force and effect.