

# Support and Maintenance Agreement

Subject to your purchase of support services, these Support and Maintenance Terms (the "Agreement") shall govern Arigoo's provision of support and maintenance services to you ("Licensee").

## **1. DEFINITIONS.**

(a) "Authorized Contacts" means the persons specified by Licensee who are responsible for all communication, including case submission, on behalf of the Licensee and Arigoo in relation to the Services (as defined below).

(b) "Development System" means the Software or part thereof, that is part of a pre-Production System (e.g., test system or prototype) or is being used by Licensee to develop a Production System.

(c) "Effective Date" means the date for commencement of the Services stated in the applicable ordering document (or in the absence of such a date, the first day of the month following the month in which the Purchase Order is issued).

(d) "Enhancement Request" means a request by the Licensee to add functionality or enhance performance beyond the specifications of the Software.

(e) "Fees" means the then-current annual fees for the applicable Support and Maintenance program.

(f) "Incident" means a single support question relating to the Software that cannot be broken down into subordinate questions.

(g) "Normal Business Hours" are 9:00 a.m. to 5:00 p.m., Monday to Friday except Arigoo company holidays (Business Days) in the local time of each Arigoo Technical Support office location.

(h) "Production System" means the Software that is being used as a regular part of actual day to day business operations of Licensee.

(i) "Release(s)" means those items described in Section 4.1 either individually or collectively, as applicable.

(j) "Services" means the Support and Maintenance program identified in Licensee's ordering document and as more fully described at <http://support.Arigoo.com>.

(k) "Software" means the Arigoo software product(s) licensed by Licensee and identified under Section 2.2.

(l) "Software Failure" means an Incident reported by Licensee to Arigoo as a result of a reproducible behavior that deviates in a material respect from the Software specifications.

(m) "Test Case" means Licensee's instructions that allow Arigoo to reproduce an Incident.

(n) "Third Party Software" means third party software that may accompany the Software but are not a part of the Software.

(o) "Version Number" means the three-part version number in the form xx.yy.[zzzz] which identifies a Release.

(p) "Workaround" means a method of operating the Software in a manner that avoids a Software Failure.

## **2. SCOPE OF THE AGREEMENT**

2.1 Subject to the terms contained herein, Arigoo shall provide the Licensee with: (a) Support for any Incident which may arise from the Licensee's use of the Software; and (b) the maintenance service in accordance with Section 4 below.

2.2 The Services shall only be provided for the Arigoo products specifically licensed by Licensee under a valid Arigoo license agreement ("License Agreement"). Licensee must also notify Arigoo of, and purchase the same Services for, any other licenses for the same Arigoo product that the Licensee has, or may acquire, for the same identifiable project or location. Furthermore, at any point in time during the term of the Services Arigoo may discontinue support for a Arigoo product at any time, provided that Major Releases of Arigoo products will be covered, for at least two years and six months after initial release.

2.3 The Services do not cover any adaptations or modifications of the Software made by the Licensee or any third party. Arigoo may offer consulting services to help resolve issues that fall outside the scope of the Services. Any consulting services shall be provided under a separate agreement and shall be subject to Arigoo's then-current consulting fees.

## TERM.

Subject to Section 11 below, the Services shall be provided for one year, commencing on the Effective Date and shall be automatically renewed at the end of the initial year and thereafter for additional one year periods, unless and until either party gives written notice to the other party not less than thirty (30) calendar days before the end of the then-current term that it elects not to extend the term. Any such renewal will be on the terms and conditions of the then current Arigoo support and maintenance terms and conditions (including without limitation the applicable Fees) provided that such terms and conditions have been notified to the Licensee not less than thirty (30) calendar days before the end of the then ending one year term.

## 4. MAINTENANCE SERVICE.

4.1 Definitions applicable to Maintenance Service:

(a) "Major Release": a release to correct any Software Failures, add functionality and/or add new features to the Software and is represented by a change in the xx component of a Version Number. They are sometimes referred to as "Upgrades".

(b) "Minor Release" means a release to correct any Software Failures and/or add features to the Software and is represented by a change in the yy component of a Version Number. They are sometimes referred to as "Updates".

(c) "Maintenance Release" means a release to correct any Software Failures and is represented by a change in the zzzz component of a Version Number.

(d) "Service Pack" means a patch created by Arigoo from time to time for all customers to resolve certain product issues. These releases are made available on an as needed basis only.

(e) "Hotfix" means a patch created by Arigoo to address a specific Software Failure for a single customer. Released on an 'as needed' basis only and will not automatically be made available to customers until they are rolled up into a Service Pack or Minor Release.

4.2 During the term of the Services, Licensee is entitled to, and may request delivery of, any Major Release, Minor Release, Maintenance Release, and Service Pack issued during the term of the Services at no additional expense beyond the Fees. Requests for such deliveries, if made after the term of the Services, will not be honored. Hotfixes are only available under certain support and maintenance programs. All Releases are made available at Arigoo's discretion.

4.3 During the term specified in Section 3 above, the Licensee will be notified on Arigoo's Support web site whenever a new Major, Minor or Maintenance Release is available.

The delivery to the Licensee of a Release will not increase the total number of licenses of the Software to which the Licensee is entitled. Furthermore, each Release shall also be subject to the terms of the applicable License Agreement.

## INCIDENT REPORTING.

5.1 Technical Support Engineer ("TSE"): the Licensee will have access to the TSE staff at a Arigoo Support Center during Normal Business Hours. The Arigoo Support Center shall coordinate the resolution of Incidents, including the verification of any reported Incident, communicate with the Licensee for additional information, deliver the resolution or Workaround, as applicable, and supply the correction and/or update as necessary.

5.2 Authorized Contacts: All reports of Incidents ("Incident Reports") must be made to Arigoo by Authorized Contact(s). The Authorized Contact(s) must have sufficient technical expertise, training and/or experience to perform the Licensee's obligations under this Agreement and will be responsible for all communications with Arigoo relating to this Agreement. The Licensee will promptly notify Arigoo in writing or by e-mail of the names, e-mail addresses and direct telephone numbers of its chosen Authorized Contacts. The Licensee may substitute Authorized Contact(s) from time to time by giving Arigoo at least one (1) week's prior notice in writing or by e-mail, including the relevant details for any new Authorized Contact. Unless Licensee has purchased Global Support, the Services shall only be provided from a single Arigoo Support Center located in the same territory from which the associated Software was purchased.

5.3 Required Information: All incident reports must, if applicable, include the following ("Incident Reports"):

(a) The Licensee's Identification Number which Arigoo shall provide to the Licensee on registration of this Agreement.

(b) The name(s) and Version Number(s) of the Software, including all Maintenance Releases and applied Software patches.

(c) Platform(s) and version(s) on which the Software is running. Before reporting an Incident, the Licensee must verify that the Incident is reproducible on the Arigoo certified platform(s) specified for the Software on Arigoo's web site. (d) A general description of the operating environment.

(e) A list of all hardware components and their version(s), in the environment.

(f) A list of operating system versions of all hardware components, including network(s).

(g) A reproducible Test Case that demonstrates the specific usage that causes the Software Failure being reported.

(h) Log files, trace and system files.

(i) Exact wording of all related error messages.

(j) A full description of the Incident and expected results.

(k) Any special circumstances surrounding the discovery of the Incident.

5.4 Definitions of Severity Levels: Arigoo will work with the Licensee to assign the appropriate Severity Level to all Incidents according to the criteria below. Severity Levels are assigned to allow prioritization of incoming Incidents. Arigoo may reclassify Incidents if it reasonably believes that Licensee’s classification is incorrect. In the event Arigoo determines that an Incident is in fact an Enhancement Request, it shall not be addressed under Section 5.4, 5.5, 5.6 and Section 6(c). Enhancement Request shall be addressed pursuant to Section 6(b).

Severity Conditions

**Severity 1 (Critical)** An Incident that results in a critical business impact for a Production System; may be assigned to an Incident where Licensee experiences (i) a complete or substantial loss of service when using a Production System, or (ii) real or perceived data loss or data corruption making an essential part of the Production System unusable, or (iii) inability to use a mission critical application within a Production System.

**Severity 2 (High)** An Incident that results in a some business impact may be assigned to an Incident where Licensee experiences (i) the functionality of the Software is adversely affected, but can be circumvented, or (ii) certain functions within the Software are disabled, but the Software remains operable, or (iii) a complete or substantial loss of service when using a Development System.

**Severity 3 (Normal)** An Incident that results in a minimal business impact; may be assigned to an Incident where Licensee experiences no loss of service and the Incident has no significant effect on the usability of the Software. This level is typically used for questions, comments and suggestions.

5.5 Arigoo’s Obligations: Arigoo will maintain a telephone number and electronic access during Normal Business

Hours for the Licensee to report Incidents and receive assistance. On receipt of an Incident Report, Arigoo shall establish whether there is an Incident for which the Licensee is entitled to the Services and, if so, shall:

(a) Confirm receipt of the Incident Report and notify the Licensee of the Incident Identification Number that both parties must then use in any communications about the Incident.

(b) Work with the Licensee to set a Severity Level for the Incident in accordance with Section 5.4 above.

(c) Analyze the Incident and verify the existence of the problem.

(d) Give the Licensee direction and assistance in resolving the Incident.

5.6 Service Goals:

Severity	Initial Response Time Goal	Initial Resolution Time Goal	Final Resolution Time Goal
1 – Critical	2 Business Hour	15 Business Days	Next product or service pack release
2 – High	4 Business Hours	30 Business Days	Future product or service pack release
3 – Normal	1 Business Day	45 business days	Future product or service pack release

“Response Time”: means the time period within which Arigoo will contact a customer to acknowledge an Incident Report, commencing from the time that Arigoo receives all required information as specified in Section 5.3 “Initial Resolution Time”: means the time period from Arigoo’s receipt of an Incident Report until Arigoo provides a workaround or fix to resolve the problem, or for Severity 2 and 3 cases, definitively identifies root cause and logs problem for fixing in a future release “Final Resolution Time”: means the time by which Arigoo will provide a permanent resolution to the problem, via a product or service pack release

Licensee’s Obligations: Arigoo’s obligation to provide the Services is conditioned upon the Licensee: (a) following all Arigoo’s installation, and maintenance instructions; b) making reasonable efforts to resolve any Incident after consulting with Arigoo; (c) providing Arigoo, as Arigoo’s reasonable request, with data, information, assistance, materials and access to equipment as necessary; (d) promptly installing all software patches; and (e) procuring, installing and maintaining all equipment, telephone lines, communication interfaces and other hardware necessary to operate the Software.

RESOLUTION OF INCIDENTS.

(a)

Arigoo shall maintain an organization that has sufficient technical expertise, training and/or experience to perform the Services during Normal Business Hours.

(b) Arigoo will review Enhancement Requests during its normal product revision cycles. However, Arigoo shall be under no obligation to incorporate any Enhancement Requests, including but not limited to modifications or new features requested by the Licensee into any Release.

(c) Arigoo will endeavor to provide resolutions to Incidents within the 'time goals' set out in Section 5.6. These goals shall not apply if the Incident is caused by Third Party Software. If the nature of the question prevents Arigoo from providing a resolution within that period, Arigoo will give the Licensee an estimate as to when a resolution can be expected.

(d) Arigoo will not be required to correct any Software Failure caused by (i) incorporation or appendix of a feature, program or device to the Software or any part thereof; (ii) any non-conformance caused by accident, transportation, neglect, misuse, alteration, modification or enhancement of the Software; (iii) the failure to provide a suitable installation environment; (iv) use of the Software for other than the specific purpose for which the Software is designed; (v) use of the Software in any operating environment other than one certified by Arigoo for the Software; or (vi) failure to incorporate any Releases previously provided by Arigoo which corrected such Software Failure.

#### 7. FEES.

The Licensee will pay Arigoo the applicable Fees prior to the Effective Date and thereafter prior to the date of each renewal. The Licensee will be notified of any increases in the Fees at least thirty

(30) calendar days prior to the automatic renewal of the Services. Notwithstanding the foregoing, if Licensee elects to renew annual technical support, the support fee for the second year shall be equivalent to the amount paid for the first year herein (on an annualized basis where applicable) for the applicable Arigoo products, provided Licensee meets all requirements of the then-current support offerings. If Licensee declines to renew the Services, and then later elects to reinstate the Services, the Licensee will be required to pay a reinstatement fee equal to 150% of the support fee that would have been owed during the lapsed period.

#### 8. LICENSE TERMS AND PROPRIETARY RIGHTS.

All Services hereunder (including the provision of Releases and corrections) shall be provided to the Licensee subject to and in accordance with the terms of the applicable License Agreement. Consequently, without limiting the generality thereof, (a) such Services shall, in addition, be subject to such additional disclaimers of warranties and limitations on liability as are provided in such License Agreement, and (b) Arigoo shall retain all

ownership rights and title to all such Releases and corrections provided.

#### 9. DISCLAIMER OF WARRANTY

THE SERVICES ARE PROVIDED "AS IS." ARIGOO DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES; INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ARIGOO DOES NOT WARRANT THAT THE ARIGOO PRODUCTS, SERVICES AND/OR ANY FIXES, MAINTENANCE RELEASES, MAJOR RELEASES OR OTHER ITEMS PROVIDED IN CONNECTION THEREWITH WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION. TO THE EXTENT THAT ARIGOO MAY NOT DISCLAIM ANY WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

#### 10. LIMITATIONS ON LIABILITY.

IN NO EVENT WILL ARIGOO BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES (INCLUDING ANY LOST DATA, LOST PROFITS, OR BUSINESS INTERRUPTION) ARISING FROM THIS AGREEMENT, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), CONTRACT, OR OTHERWISE, EVEN IF ARIGOO HAS BEEN ADVISED, KNOWS, OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. ARIGOO'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AGGREGATE SUPPORT FEES PAYABLE UNDER THIS AGREEMENT IN THE PREVIOUS TWELVE (12) MONTHS. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS AMOUNT

#### 11. TERMINATION.

11.1 Termination and Expiration. Either party may terminate the Services upon material breach by the other party of any provision of these terms and conditions or the applicable License Agreement, and (if such breach is remediable) that other fails to remedy such breach within thirty (30) calendar days of that party being notified of such breach in writing.

11.2 Effect of Expiration or Termination. Upon expiration or termination of the Services in respect of a software license for any reason:

(a) All rights granted to the Licensee hereunder in respect thereof will become null and void, except for the right to use any Releases delivered in accordance with Section 4 above, subject to the terms of the License Agreement .

(b) All outstanding obligations or commitments of either party to pay amounts to the other party, if any, will become immediately due and payable.

(c) Neither party will have any right to receive any compensation, reimbursement or other amounts from the other party solely as a result of such termination, and neither party will have any right whatsoever in or to the other party's software or any copyrighted materials, patents, trade secrets, or other proprietary rights relating to the other party's software, other than as provided for herein.

## 12. GENERAL.

(a) Governing Law. This Agreement is governed by the laws of the country of Singapore, excluding its choice of law rules and excluding the United Nations Convention for Contracts for the International Sale of Goods, and Licensee further consents to jurisdiction by the state and federal courts sitting in the Country of Singapore.

(b) Complete Agreement. This Agreement is the complete agreement between Arigoo and Licensee regarding the Services and supersede any prior or contemporaneous agreements or communications, written or oral, relating to the subject matter hereof. This Agreement will not be modified except by a properly executed written agreement. Any terms and conditions of any purchase order or other instrument issued by Licensee in connection with this Agreement which are in addition to, inconsistent with or different from the terms and conditions of this Agreement will be of no force or effect.

(c) Survival. Sections 1, 7 through 12 will survive termination or expiration of this Agreement for any reason.

(d) Assignment and Binding Effect. Licensee may not assign or transfer (including by operation of law) this Agreement or the licenses granted hereunder without the prior written consent of Arigoo and any attempt to do so will be void.

(e) Notices. Any notice required to be sent to a party under this Agreement will be in writing, effective on receipt by that party, and will be sent by fax, first-class mail or personal delivery to the addresses provided by the parties at the time of ordering. Either party may change its notice address by giving written notice to the other party at the other party's notice address.

(f) Waiver and Severability. Waivers must be in writing signed by an authorized representative. The waiver of one breach or default under this Agreement will not constitute the waiver of any subsequent breach or default. Any provision of this Agreement held to be illegal or unenforceable will be deemed amended to conform to applicable laws or regulations, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken and the remainder of this Agreement will continue in full force and effect.

(g) Independent Contractors. Nothing herein contained will be construed to place the parties in the relationship of partners, joint venturers, principal and agent, or employer and employee, and neither party will have the power to obligate or bind the other party in any manner whatsoever. Each party will be responsible for the acts, negligence and omissions of its employees, agents, servants and subcontractors.

(h) Force Majeure. Neither party will be liable to the other by reason of any failure of or delay in the performance of its obligations under this Agreement, except for obligations to pay money, to the extent such failure or delay is due to circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure"), nor will any such failure or delay give the other party the right to terminate this Agreement. Each party will use its best efforts to minimize the duration and consequences of any failure of or delay in performance resulting from a Force Majeure event. Such Force Majeure events will include (without limitation) accidents, acts of God, labor disputes, actions of any government agency and shortage of materials.

(i) Export. Licensee hereby acknowledges and agrees that it will not export or re-export the Arigoo products or technical data supplied by Arigoo, directly or through third parties, to any source for use in any country or countries in contravention of any export laws, regulations or decrees of the Singapore government, or any agency thereof. Licensee will be solely responsible for identifying and complying with all laws of any jurisdiction outside of Singapore regarding the use of the Arigoo products and technical data supplied by Arigoo. Licensee agrees to obtain all licenses, permits or approvals required by any government at Licensee's sole cost and expense.

(j) Government Use. Any Arigoo products provided under this Agreement are commercial computer software developed exclusively at private expense, and in all respects are proprietary data belonging to Arigoo or its licensors. The Arigoo products and any accompanying documentation are "Commercial Items", as that term is defined at 48 CFR Section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 CFR Sections 12.212 and 227.7202, as applicable. Consistent with 48 CFR Sections 12.212 or 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Further, use, duplication or disclosure by the United States government is subject to the restrictions as set forth in the Rights in Technical Data and Computer Software Clauses in DFARS 252.227-7013(c)(a)(ii) and FAR

52.227-19(c) as applicable. Unpublished rights reserved under the copyright laws of Singapore.

(k) Injunctive Relief. In the event of a breach of this Agreement, money or damages will not be an adequate remedy, and 129841. Therefore, in addition to any other legal or equitable remedies, either party will be entitled to seek an injunction or other equitable relief against such breach.