



## SOFTWARE SUPPORT AGREEMENT – UK and Eire

This Software Support Agreement (the "Agreement") is entered into between Buzzacott Computer Services Limited ("Buzzacott"), of 12 New Fetter Lane London EC4A 1AG England, a company registered in England and Wales and

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|---|---|-------------------|
| <p>Organisation<br/>Name:<br/>Contact:<br/>Address:</p> | <p>Capacity Builders<br/><br/><br/>77 Paradise Circus<br/>Birmingham<br/>B1 2DT</p> | <p>("Client")</p> |
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Whereas the Client has entered into a Software Licence Agreement with MicroEdge Inc, the terms of this Agreement shall apply to all services provided by Buzzacott under this Agreement in respect of Software Support relating to the Software.

### 1. DEFINITIONS.

1.1. **"Software"** means the computer software described in the Software License Product Order Schedule, (along with any Updates as defined below) which have been licensed to Client pursuant to an agreement ("the Licence Agreement") between Client and MicroEdge Inc dated 3 July 2009

1.2. **"Documentation"** means the reference materials, whether in printed or machine-readable form, generally furnished with the Software. Unless otherwise indicated, the term "Software" will include "Documentation."

1.3. **"Maintenance and Services Order Schedule"** means an order form which includes a description of the specific services and by which Client places its order. When accepted by Buzzacott, the Maintenance and Services Order Schedule becomes a part of this Agreement.

1.4 **"Updates"** means maintenance releases improvements and enhancements to the Software and/ or the Documentation which is provided by MicroEdge Inc to Buzzacott for general provision to Clients who are eligible to receive maintenance services. Updates shall not include custom reports and custom versions of the Software nor are releases, improvements and enhancements for which MicroEdge Inc or Buzzacott charges separately or extra.

1.5 **"Maintenance"** means remote telephone, fax or email consultation and bug fixes, error correction, workarounds and Updates as they become available.

### 2. MAINTENANCE AND SUPPORT.

2.1 Client acknowledges that unless it elects to obtain maintenance and support

services from Buzzacott, Buzzacott will have no maintenance or support obligation nor any obligation to fix any non-conformities in the Software.

2.2 Maintenance Services will commence on the Effective Date defined in the Licence Agreement and will continue in effect for a period of thirty (30) days (the "Initial Maintenance Period"). Provided that the Client shall not have terminated the licence under the money back guarantee, contained in clause 7 of the Licence Agreement, the Client shall, following the expiration of the Initial Maintenance Period, acquire the Maintenance and Support Service for the annual maintenance fee specified on the Maintenance and Services Order Schedule. Thereafter, annual maintenance will automatically renew for additional one (1) year periods unless either party has terminated such coverage by providing thirty (30) days written notice.

2.3 Client's maintenance services will consist of (i) unlimited telephone consultation on the use of the Software during Buzzacott's normal business days between the hours of 8am and 6pm, London time and assistance in error isolation and correction, (ii) the prompt furnishing of any available problem solutions relating to the currently supported version(s) of the Software and (iii) the provision of Updates to the Software. Buzzacott's maintenance policies are further described in the current edition of the Buzzacott Catalogue and Resource Guide which Buzzacott publishes for Clients' guidance and which for the avoidance of doubt specifies a guaranteed response time of two hours from initial contact during working hours.

Buzzacott will use reasonable efforts to correct or obtain correction of any reproducible program error brought to its attention.

2.4 Maintenance is available for the most recent version of the Software and for the immediately preceding version, provided no more than 12 months have elapsed since the current version became generally available

2.5 Buzzacott will have no support obligation to Client (i) at the end of any annual Maintenance period unless Client elects to obtain additional support by paying Buzzacott an annual maintenance renewal fee ("Maintenance Fee") (ii) where Client is using a version of the Software that is not the then-current or previous sequential release (iii) where the Software has been modified by Client or (iv) where data has been written to the data files other than directly through the Software.

2.6 In the event Client elects not to obtain or renew Maintenance, Client may retain the Software but will have no further right to Maintenance for the Software.

2.7 Client may reinstate lapsed Maintenance by paying Buzzacott 100% of the lapsed Maintenance fees together with the current year's Maintenance Fees

2.8 Client agrees to test and verify any suspected error or defect in the software and to report defects to Buzzacott in a timely manner. Upon request, Client will provide Buzzacott with reasonable assistance in order to reproduce a problem.

2.9 Maintenance services do not cover hardware, operating systems, networks, or third party software.

2.10 Maintenance Requirements. To qualify for Maintenance and Support service (i) Client's staff must have received training in the use of the Software from Buzzacott or MicroEdge Inc and (ii) Client's staff must be familiar with the Documentation provided with the Software.

### **3. CONFIDENTIAL INFORMATION.**

3.1. By virtue of this Agreement, either party may have access to the other party's information that is confidential ("Confidential Information"). Each party agrees to hold the other party's Confidential Information in confidence during the term of this Agreement and for a period of three years after termination. Each party further agrees that, unless required by law, it will not make the other party's Confidential Information available in any form to any third party or use such Confidential Information for any purpose other than the implementation of this Agreement.

Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

3.2. "Confidential Information" means non-public information clearly identified as proprietary or confidential. Confidential Information may include (but is not limited to) information concerning business methods, business plans, customer information, methodologies, the Software, pricing terms, and test results, including the results of any evaluation of the Software or of a pre-production release thereof.

3.3. Confidential Information does not include information that (a) is or becomes publicly available through no act or omission of the other party; (b) the owning party discloses to a third party without restriction on disclosure; (c) is disclosed to the other party by a third party without restriction on disclosure and without breach of a nondisclosure obligation; (d) is independently developed; or (e) is previously known to the other party without nondisclosure obligations.

### **4. WARRANTY AND DISCLAIMER OF WARRANTY.**

4.1. Buzzacott represents and warrants that it has the right and authority to enter into and to grant the rights described in this Agreement. Buzzacott warrants that the maintenance services will be performed in accordance with industry standards appropriate to the software and the business processes in which it is used.

Further, Buzzacott is not responsible for obsolescence of the Software that may result from changes in Licensee's requirements.

**THE WARRANTIES AND CONDITIONS ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED. BUZZACOTT SPECIFICALLY DISCLAIM ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Buzzacott does not warrant that the Software will achieve any specific results, operate without interruption, or be error free.

### **5. LIMITATION OF LIABILITY.**

5.1. For any breach of the warranty described in Section 4 above, Client's exclusive remedy and Buzzacott's entire liability shall be limited to the correction or

replacement, as soon as practicable, of any Software, Software part, or media, which Buzzacott determines to be the cause of an error.

**5.2. BUZZACOTT SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS RESULTING FROM BUSINESS DISRUPTION, LOST PROFITS, TRADING OR EXECUTIONS LOSSES), OR DAMAGE TO DATA, WHETHER IN AN ACTION FOR CONTRACT OR TORT, EVEN IF BUZZACOTT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**BUZZACOTT'S LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNTS RECEIVED BY BUZZACOTT AS ONE YEAR'S SUPPORT FEES UNDER THE ORDER THAT GIVES RISE TO THE LIABILITY.**

5.3 Notwithstanding clause 5.2 herein, Buzzacott shall indemnify the Client to a total claim or claims under this or any other Consultancy or Maintenance Agreement of £1,000,000 against injury including death and personal injury to any persons or damage to any physical property which may arise out of the act, default or negligence of Buzzacott, their sub-contractors, agents or employees and for the avoidance of doubt this provision will apply to this Software Support Agreement and other Consultancy or Maintenance Agreement entered into between the parties.

5.4 This Section allocates the risks under the Agreement between Buzzacott and Client. Buzzacott's pricing reflects this allocation of risk and the limitations specified herein

Except in respect of the liability of Buzzacott for death or personal injuries or damage to physical property resulting from the negligence of Buzzacott or its employees no action regardless of form arising out of the transactions in relation to this Agreement may be brought by the Client more than 3 (three) years after the cause of action has accrued.

## **6. TERM AND TERMINATION.**

6.1. This Agreement will take effect on the Effective Date. This Agreement will remain in effect perpetually unless and until terminated by mutual agreement of the parties or as set forth in clause 2.2 or 6.2.

6.2. Buzzacott will have the right to terminate this Agreement if Client fails to

perform any material obligation under this Agreement (including the obligation to pay amounts due hereunder) and fails to cure such non-performance within thirty (30) days following written notice of such failure.

6.3. The following obligations will survive termination of this Agreement for any reason: (a) use and nondisclosure of confidential information; (b) obligations to make payments of amounts that become due under this Agreement prior to termination; (c) the indemnity to the Client set out in Clause 5.3 above.

## **7. GENERAL TERMS.**

7.1. Notices. Any notices (including address change notices) will be in writing delivered personally, by first class mail (return receipt requested), by facsimile, by Email or by prepaid express courier and are effective upon receipt. Notices will be addressed to Buzzacott at the address set forth in this Agreement and to Client at its address as set forth on the relevant Services Order Schedule.

7.2. Assignment. The rights and obligations of each party under this Agreement are not assignable by either party without the prior written consent of the other party and any attempt to assign them without that consent will be void. Notwithstanding the foregoing, either party may assign, upon written notice to the other, both the rights and obligations of this Agreement to the surviving corporation in any merger to which it is a party or to any party that acquires all or substantially all of its capital stock or assets.

Further, Client may transfer the rights hereunder to a third party reasonably acceptable to both Buzzacott and to MicroEdge Inc who performs information processing services for Client, provided that such third party agrees in writing to be bound by the terms of both this Agreement and of the Licence Agreement.

7.3. Waiver. The failure of a party to prosecute its rights with respect to a default or breach hereunder shall not constitute a waiver of the right to enforce its rights with respect to the same or any other breach.

7.4. Governing Law. This Agreement shall be governed by and construed in accordance with English Law.

7.5. Force Majeure. Neither party shall be responsible for any delay in its performance due to causes beyond its reasonable control.

7.6. Representation. Neither of the parties has entered into this Agreement in reliance upon any representation, warranty, or undertaking by or on behalf of the other or any third party which is not expressly set forth in this Agreement. Neither party shall have any remedy in respect of any misrepresentation or untrue statement made by the other or any third party unless and to the extent that the claim lies for breach of warranty under this Agreement, provided that this clause shall not exclude any liability for fraudulent misrepresentation.

7.7. Severability. In the event that any provision of this Agreement is found invalid or unenforceable, it will be enforced to the extent permissible and the remainder of this Agreement will remain in full force and effect.

7.8. Duplicate Originals. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute together but one and the same document.

7.9. Subsidiaries. The rights granted to Client shall extend to subsidiaries of Client, and therefore, whenever appropriate, the term "Client" shall include any such subsidiary, provided that any such subsidiary (a) directly or indirectly controls or is controlled by or is under common control with Client. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity through the majority ownership of voting securities; (b)

the subsidiary agrees in writing to accept the rights and obligations specified in both this Agreement and in the Licence Agreement; and (c) the subsidiary is identified from time to time in writing to both Buzzacott and to MicroEdge Inc.

7.10. Injunctive Relief. Client acknowledges that in the event of Client's breach of any of the provisions hereunder, Buzzacott may not have an adequate remedy in money or damages. Buzzacott shall therefore be entitled to seek an injunction against such breach from any court of competent jurisdiction immediately upon request. Client's right to obtain injunctive relief shall not limit its right to seek further remedies.


7.11. Use of Words. Words used in the singular shall mean and include the plural and vice versa. Words suggesting natural persons shall mean and include companies, corporations, unincorporated firms, associations, and other entities recognised by law and vice versa.

7.12 Entire Agreement. This Agreement constitutes the complete agreement between the parties and supersedes all prior or contemporaneous discussions, representations, and proposals, written or oral, with respect to the subject matters discussed herein. No modification of this Agreement will be effective unless contained in a writing signed by an authorised representative of each party. No term or condition contained in Client's purchase order will apply unless expressly agreed to by Buzzacott in writing.

Accepted by Client



Authorised Signature

Name: 

Title: CEO

Date: 31/8/10

Buzzacott Computer Services Limited



Authorised Signature

Name: 

Title: Director

Date: 1<sup>st</sup> September 2010

### Maintenance and Services Order Schedule

Client Capacity Builders Contact [REDACTED]  
Address 77 Paradise Circus Telephone [REDACTED]  
Birmingham, Fax [REDACTED]  
B1 2DT Email [REDACTED]@capacitybuilders.org.uk

### Maintenance and Support Service

Maintenance and Support Services are provided by Buzzacott Computer Services Limited.

Maintenance and Support Service for the first thirty (30) days are included with the Software at no additional charge and is activated upon product shipment by Buzzacott Computer Services Limited.

Client has elected to acquire Maintenance and Support Service from Buzzacott Computer Services Limited for a fee equal to 20% of the Software licence fee.

Thereafter, the annual maintenance renewal will be calculated based on twenty (20%) of the then-current licence fee for the Software, which amount will not be increased by more than ten percent (10%) from year to year.

Maintenance and Support service policies are defined in the current Buzzacott Catalogue and Resource Guide.

Unless otherwise stated, all payments are due and payable within 30 days of invoice date. For any overdue payments late fees will accrue interest at 2% over Royal Bank of Scotland base rate.

| Services  | Cost       |
|---|------------|
| Maintenance and Support - for the period 2 <sup>nd</sup> September 2010 until 1 <sup>st</sup> September 2011, excluding VAT | £22,263.00 |

The effective date of this Maintenance and Services Order Schedule is the later of the two dates on which it is signed.

Upon approval please sign and fax this agreement to Buzzacott Computer Services Limited on +44 (0)20 7556 1212 for the attention of Ally Longman.

Accepted by Client

[REDACTED]

Authorised Signature

Name: [REDACTED]

Title: CEO

Date: 31/8/10

Buzzacott Computer Services Limited

[REDACTED]

Authorised Signature

Name: [REDACTED]

Title: Director

Date: 1<sup>st</sup> September 2010

