

<p><b>THIS AGREEMENT is made on the ____ day ____ of 20__</b></p>	
<p><b>BETWEEN</b>  <b>JADE SOFTWARE CORPORATION LIMITED (“JSC”)</b>  at Christchurch, New Zealand</p> <p>Signed on behalf of <b>JSC</b> by</p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	
<p><b>BETWEEN</b>  _____  <b>(“The Client”)</b></p> <p>at _____,</p> <p>Signed on behalf of <b>The Client</b> by</p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	

- 1.7 “Documentation” means the operating manuals, user instructions, technical literature and all other related materials in eye-readable form supplied to the Client by JSC for aiding the use and application of the Supported Software, including materials made available on the web.
- 1.8 “JSC” means the owner and developer of the Supported Software.
- 1.9 “Level 1 Support” means Support provided by JSC to the Client as set out in Schedule 1.
- 1.10 “Level 2 Support” means Support provided by JSC to the Client as set out in Schedule 1.
- 1.11 “Level 3 Support” means Support provided by JSC to the Client as set out in Schedule 1.
- 1.12 “Major Feature Release” means the first number in the release identification – e.g. 6.1.012 has “major feature release” 6.
- 1.13 “Minor Feature Release” means the combination of the first and second numbers in the release identification – e.g. 6.1.012 has “minor feature release” 6.1.
- 1.14 “Parsys” means JSC’s application for reporting and tracking issues and problems with the Supported Software.
- 1.15 “Renewal Date” means, if applicable, the date on which the Term is renewed.
- 1.16 “Support” means the services to be provided by JSC in respect of the Supported Software and available for the continuance of this Agreement as set out in Schedule 1.
- 1.17 “Support Fee” means the fee for the Support to be provided under this Agreement and specified in Schedule 2.
- 1.18 “Supported Release” means the Current Release and any previous Current Release that is still within the criteria defined in the published Release Policy, available here:  
[http://www.jadeworld.com/downloads/jade/JADE\\_ReleasePolicy.pdf](http://www.jadeworld.com/downloads/jade/JADE_ReleasePolicy.pdf)
- 1.19 “Supported Software” means the Supported Releases of the software that encompasses the JADE Development and JADE Production Environments together with any releases or enhancements that have been made generally available to the Client. New releases of the Supported Software will be made available in object code in machine-readable form.
- 1.20 “Term” means the term of this contract as defined in Clause 3.

## JADE SOFTWARE SUPPORT AGREEMENT

- A. JSC has developed and owns the Supported Software and has granted to the Client a non-exclusive licence to use the Supported Software.
- B. JSC has agreed to provide to the Client certain services in respect of the Supported Software on the terms and conditions set out below.

### AGREEMENT

#### 1. DEFINITIONS

In this Agreement, unless inconsistent with the context or otherwise specified the following definitions will apply:

- 1.1 “The Client” means the user of the Supported Software as executed in this Agreement.
- 1.2 “Authorised Support Personnel” means the individuals nominated by the Client in Schedule 3 that are the only individuals allowed to enter into communications (including but not limited to Parsys, Email or Telephone) with JSC.
- 1.3 “Commencement Date” in respect of Level 1 Support means the date on which the licence commenced as defined in Schedule 3, and in respect of Level 2 Support and Level 3 Support means the date on which the Client pays the initial Support Fee to JSC.
- 1.4 “Consolidated Patch Release” is a patch release against a Supported Release and is signified by the third number in the release identification – e.g. 6.1.012 has a consolidated patch release number of “012”.
- 1.5 “Current Release” means the latest generally available supported Minor Feature Release within a given Major Feature Release number and is signified by the first two numbers in the release identification – e.g. 6.1.012 has a “current release” 6.1.
- 1.6 “Customer Fix” means a fix to a product issue where the Client requires a rapid response. Normally a Customer Fix will be released to one or more specific Clients in the first instance and incorporated later in the next consolidated patch release of the Supported Software for general distribution.

#### 2. SUPPORT

- 2.1 JSC shall provide the Support to the Client as requested in Schedule 3 and in accordance with Schedule 1.
- 2.2 At any time the Client may increase the required level of Support by notifying JSC in writing. The increased level of Support will be available upon payment of the increased Support Fee for the remainder of the Term calculated on a pro rata basis.
- 2.3 The Client may reduce the level of Support on any Renewal Date by notice in writing to JSC.

#### 3. TERM

- 3.1 The Support shall begin on the Commencement Date.
- 3.2 In respect of Level 1 Support the term shall continue for so long as the Client has a valid licence agreement for the use of the Supported Software.
- 3.3 In respect of Level 2 Support and Level 3 Support the Term shall continue for one year from the Commencement Date therefore. Thereafter the Client shall have the right to renew the term for further periods of one year each on payment of the Support Fee then payable.

#### **4. PAYMENT**

- 4.1 The Client shall pay the Support Fee on the Commencement Date and, if applicable, on the Renewal Date. In respect of Level 2 Support and Level 3 Support the payment must have been received by JSC annually in advance before Support shall be provided. Any charges payable by the Client under this Agreement in addition to the Support Fee shall be paid within 30 days after the receipt by the Client of JSC's invoice. If payment has not been received within forty five (45) days from the date of the invoice, JSC, upon written notification to the Client, reserves the right to charge interest on all amounts remaining unpaid forty five (45) days from the date of the invoice, except for any amounts that are the subject of a bona fide dispute. Such interest will be calculated on a monthly basis at 1.5% per month on any outstanding balance.
- 4.2 The Support Fee and other charges payable under this Agreement are exclusive of all taxes or levies, which shall be payable by the Client at the rate and in the same manner for the time being prescribed by law against submission of a valid tax invoice.
- 4.3 JSC shall be entitled at any time, and from time to time, to increase the Support Fee by giving written notice to the Client. The new Support Fee shall be payable on the next Renewal Date.

#### **5. RELEASES**

- 5.1 As soon as reasonably practicable JSC shall make the Supported Software together with the Documentation available for download by the Client on the internet.
- 5.2 JSC will support the Supported Software only. Fixes to the Supported Software will be provided in accordance with JSC's published release policy (available on JSC's website at [www.jadeworld.com/jade](http://www.jadeworld.com/jade)).

#### **6. EXCLUDED SUPPORT AND MAINTENANCE**

- 6.1 JSC shall be under no obligation to provide Support in respect of :
- 6.1.1 Problems resulting from any modifications or customisation of the Supported Software not authorised in writing by JSC;
- 6.1.2 Any software other than the Supported Software;
- 6.1.3 Incorrect or unauthorised use of the Supported Software or operator error where these are defined as use or operation not in accordance with the Documentation;
- 6.1.4 Any programs used in conjunction with the Supported Software;
- 6.1.5 Use of the elements of the Supported Software in any combination other than those specified in the Documentation;
- 6.1.6 Use of the Supported Software with computer hardware, operating systems or other supporting software other than those specified in the Documentation;
- 6.1.7 The Client's failure to install and use a new release of the Supported Software within 28 days of receipt of the same; and
- 6.1.8 The Client fails to comply with the Client's obligations in clause 10.
- 6.1.9 Any problems relating to The Client's hardware failing.
- 6.1.10 Any issues resulting from The Client application coding or design.
- 6.2 JSC will discontinue Support for releases of the Supported Software as and when they fall outside the criteria specified in Clause 5.
- 6.3 JSC reserves the right to refer any services outside the scope of Software Support Services to the Client's Account Manager.

#### **7. WARRANTY**

- 7.1 JSC warrants to the Client that all Support supplied under this Agreement will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.
- 7.2 The Client hereby agrees that its sole remedy in respect of any non-conformance with any warranty in this Agreement is that JSC will remedy such non-conformance (either by itself or through a third party) but if, in JSC's reasonable opinion, it is unable to remedy such non-conformance, JSC will refund the Support Fee for the year in which the Support, the subject of such claim, were supplied, if paid, whereupon this Agreement shall immediately terminate.
- 7.3 JSC does not warrant that all errors can and will be corrected. JSC shall use its reasonable endeavours to correct errors in the Supported Software, so long as the errors are repeatable by JSC, or to provide a software patch; or to bypass around such error.
- 7.4 The Client must promptly notify JSC of any non-conformance to the above warranties in order to benefit from the remedy stated above, and in any event within three months.

#### **8. LIABILITY**

- 8.1 In no event will JSC be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of JSC, whether such damages were reasonably foreseeable or actually foreseen.
- 8.2 The parties hereby acknowledge and agree that the limitations contained in this clause are reasonable in light of all the circumstances.
- 8.3 The Client acknowledges the support is supplied for business purposes but the Client's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort, including negligence, or any other form of action. For the purposes of this clause, JSC includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.

#### **9. THE CLIENT'S WARRANTY**

- 9.1 The Client warrants that it has not relied on any oral representation made by JSC or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by JSC which are only intended to convey a general idea of the products and services mentioned therein. The Client has however relied upon the descriptions, illustrations, functions and specifications contained in the Documentation.

#### **10. THE CLIENT'S OBLIGATIONS**

- 10.1 The Client shall take all reasonable steps to ensure that any fault that is to be reported is not covered by the exclusions defined in Clause 6.
- 10.2 The Client will ensure that only Authorised Support Personnel communicate with JSC.
- 10.3 The Client shall operate the Supported Software, maintain data and the database in accordance with the Documentation.
- 10.4 The Client shall supply in writing to JSC a detailed description of any fault requiring Support and the circumstances in which it arose, and shall submit sufficient material and information as requested by JSC's support staff to enable JSC's support staff to reproduce the problem.
- 10.5 JSC reserves the right to charge on a time and materials basis for any issue for which there is insufficient supporting documentation or where JSC discovers that the reported issue is one which is excluded from the support agreement (for example those referred to in clause 6). The Client authorization for payment must be given prior to resolution of such issues being provided by JSC.
- 10.6 The Client shall comply with all reasonable instructions of JSC with regard to the use of the Supported Software, including, without limitation, the implementation of upgrades to the Supported Software, which JSC may provide from time to time.
- 10.7 Advise JSC, in writing, of any change in the details of the Authorised Support Personnel. Such change not to be unreasonably withheld by JSC. Additions and deletions of Authorised Support Personnel will be governed by the terms and conditions of this agreement.

#### **11. TERMINATION**

- 11.1 This Agreement shall be automatically terminated if the Client does not pay the Support Fee to JSC on any Renewal Date or the License for the supported software terminates.
- 11.2 JSC may terminate this Agreement forthwith on giving notice in writing to the Client if the Client commits any serious breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from JSC so to do, to remedy the breach (such request to contain a warning of JSC's intention to terminate).
- 11.3 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party.
- 11.4 On termination other than through the fault of JSC, the Client shall not be entitled to any refund of the Support Fee or any part thereof that has been paid.

## 12. AMENDMENTS

12.1 JSC may amend the terms of this agreement, including without limitation the Support or the Support Fee, at any time by notice in writing to the Client. Any such changes shall only become effective on the next Renewal Date.

## 13. ASSIGNMENT

13.1 This Agreement is personal to the parties and neither this Agreement nor any rights, licenses or obligations under this Agreement, may be assigned by either party, without the prior written approval of the other party.

13.2 Notwithstanding the foregoing, either party may assign this Agreement to any acquirer of all, or of substantially all, of such party's equity securities, assets or business relating to the subject matter of this Agreement, or to any entity controlled by, that controls, or is under common control with a party hereto. Any attempted assignment in violation of this clause will be void and without effect.

## 14. ENTIRE AGREEMENT

14.1 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire Agreement between the parties support. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

## 15. FORCE MAJEURE

15.1 Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a continuous period of more than 3 months, either party may terminate this Agreement by written notice to the other party.

## 16. SEVERANCE

16.1 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## 17. GENERAL

17.1 This Agreement shall be binding upon, and endure to the benefit of, the parties and their respective permitted successors and permitted assignees.

17.2 This Agreement shall be governed by, and construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in relation to all disputes arising out of or in connection with this Agreement.

## 18. CONFIDENTIALITY

18.1 Both parties agree that unless they have the prior written consent of the other, they will not use or disclose to any third party (other than for the purpose of performing this Agreement) the terms and conditions of this Agreement or any information confidential to the other party. The obligations of this clause 18 shall survive termination or cancellation of this Agreement.

## 19. DISPUTE RESOLUTION

19.1 Any doubts, differences, claims or disputes ("dispute") which arise between the parties to this Agreement as to any act, matter or thing touching this Agreement, then except as otherwise provided in this Agreement such dispute will be determined in the following manner :

19.1.1 Referral as to the scope and nature of the dispute will be made by either party in a written notice to the other party. Both parties will meet within five (5) working days to discuss the matter in dispute and will negotiate in good faith to resolve the dispute.

19.1.2 If after ten (10) working days the parties do not resolve the dispute then the dispute will be referred to the Senior Executive Officer of each party for resolution.

19.1.3 If such dispute cannot be resolved by negotiation as set out above within twenty (20) working days then either party may refer the dispute to arbitration. The arbitration will be commenced by either party giving to the other notice in writing, stating the subject matter of the dispute, or difference and that party's desire to have the matter referred to arbitration. The arbitration will be by one arbiter if the parties can agree upon one and, if not, then by two arbiters, one appointed by each party, and their umpire.

19.1.4 If the recipient of a Notice to Commence Arbitration fails to agree to, or nominate an arbitrator within ten (10) working days of receipt of the Notice, then an arbitrator nominated in the Notice by the other party shall be the sole arbitrator.

19.1.5 The award in the arbitration will be final and binding on the parties.

19.1.6 The parties will continue to perform their obligations under this Agreement without prejudice pending resolution of the dispute.

