

Your XMLProbe Support Pack Agreement Issued March 2005

This Agreement sets out the terms and conditions on which we, Griffin Brown Digital Publishing Ltd., (hereafter "GB") will supply you with Support for one year for the Annual Subscription Fee.

1. Definitions used in this Agreement

"Commencement Date" means the first date following the expiry of the free Support period (if any) under your Software licence agreement.

"Replacement Software" means any Updates or Upgrades;

"Support" means the Software support services as set out in clause 2 as well as the benefits contained in all up to date literature at the Commencement Date.

"Software" means the software Licence or product ordered by you from us.

"Subscription Fee" means the annual fee payable by you to us for Support.

"Updates" means a permanent fix or solution to known problems in the Software as released by us at times deemed appropriate by us; **"Upgrades"** means a major revision to the Software, which adds new and different functions or capabilities to the Software and is provided to you at times deemed appropriate by us if you have subscribed for Support.

"Working Day" means any day that is not a Saturday, Sunday or public holiday in England; The term **"you", "your" and "yours"** shall mean the company or partnership or sole trader which contracts under this Agreement and the term **"we", "us" and "our"** shall mean, as the context permits, either GB, or alternatively it may mean reference to both you and GB together.

2. Our commitment to you

2.1 We will provide you with the following Support:

2.1.1 Technical Support which will be given by telephone, fax, e-mail, on-line and postal mail at your option as to use of the Software and to the diagnosis and rectification of faults in the Software, but not in respect of malfunctions in computer hardware, operating systems or printers. This support shall be ordinarily available between the hours of 9am and 5pm on each Working Day.

2.1.2 Participation in the NCC Escrow scheme.

2.1.3 Free Point Upgrades and Updates

2.1.4 Preferential pricing terms for major Upgrades

2.1.5 Extended Technical Support of 10 hours per annum, for example for customising the software, staff training etc..

2.1.6 Subscription to a support email list.

2.2 We will provide you with Support for a period of one year commencing on the Commencement Date. On each anniversary of the Commencement Date ("the Renewal Date") and subject to clause 4. this Agreement will continue automatically for successive periods of one year provided that you pay the prevailing Subscription Fee or annual licence fee (as appropriate) by the due date. An invoice will be issued to you prior to the Renewal Date and is payable in accordance with its terms.

2.3 We will provide Support in accordance with this clause 2 with all due care and skill.

2.4 We shall use all reasonable endeavours to respond to you by the end of the next Working Day.

2.5 We do not warrant or guarantee you uninterrupted or error free service of any technical support as set out in clause 2.3 above in circumstances where any fault arises out of the improper use, operation or neglect of the Software or any equipment, modification or merger of the Software (other than as permitted in writing by us), your failure to implement recommendations or

solutions to faults notified to you by us, any repair adjustment or alteration made by any person other than us without our previous consent, or any failure to install promptly and use any Replacement Software.

2.6 Support shall not apply to third party software included in the Software.

3. Your obligations to us

You shall:

3.1 ensure the Software is used only on the computer platform for which the Software has been licensed and approved;

3.2 maintain and operate the Software in a proper and prudent manner in accordance with such advice and instruction as we may issue from time to time, and allow its use only by competent and authorised personnel;

3.3 keep a minimum of one separate back-up of your current data (for use in rotation) of a standard and frequency to allow you to recover information without undue loss of staff time;

3.4 not permit any alterations in the Software, the operating instructions or the manual, save by written consent from us expressly approved by us in writing;

3.5 make available to us without charge, any information or facilities to enable us to discharge our obligations under this Agreement including, but not limited to, computer print-outs, photocopies of documents, provided always that we shall hold as confidential any such information provided by you;

3.6 notify us of any defect or alleged defect within five days of the date it becomes apparent; and

3.7 be responsible for ensuring that the Software is suitable for the purpose intended.

4. How can this Agreement be terminated?

4.1 We may terminate this Agreement by giving you seven days' written notice at any time and if we do, we shall refund to you such pro rata amount of the Subscription Fee as is appropriate to the unexpired period of the term of this Agreement.

4.2 You agree that we shall be entitled to terminate this Agreement immediately and without refund if:

4.2.1 you commit a material or persistent breach of your obligations under this Agreement and in circumstances where such a breach is capable of rectification, the same is not rectified within fourteen days following written notification of the breach by us; or

4.2.2 you are unable to pay your debts (within the meaning of section 123 of the Insolvency Act 1986) or you become insolvent or an order is made or a resolution passed for your liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of your assets or you enter into or propose any composition or arrangement with your creditors generally or papers are filed at court seeking a moratorium in respect of you under Schedule A1 of the Insolvency Act 2000/01

4.2.3 you are a partnership and a petition is presented, or an order is made, for the bankruptcy of any of your partners or if any of them enter into a deed of arrangement or compounds with their creditors or has a receiving order made against them or anything similar to the above occurs in any applicable jurisdiction.

4.3 Termination shall be without prejudice to any rights or claims we may have against you at the time of, or subject to, such termination and other than pursuant to clause 4.1 no refund of the Subscription Fee in full or in part shall be made to you.

5. Our liability to you under this Agreement

- 5.1 Except as provided in clause 2 above, or as expressed by statute to be incapable of exclusion or limitation, no other representations, warranties, conditions or guarantees, express or implied, including but not limited to implied warranties of fitness for purpose and satisfactory quality are made in respect of this Agreement.
- 5.2 We shall not be liable for any indirect, consequential, incidental or special damage or loss of any kind nor for any business interruption nor for loss of data, use, business, savings or profits suffered or arising in any manner whatsoever out of or in connection with this Agreement or the use of the Software and whether arising under contract, tort, including negligence, statute or otherwise.
- 5.3 If any exclusion, disclaimer or other provision contained in this Agreement is held to be invalid for any reason by a court of competent jurisdiction and as a result we become liable for loss or damage that could otherwise be limited, such liability whether in contract, tort or otherwise, will not exceed the Subscription Fee actually paid by you.
- 5.4 Nothing in this Agreement shall exclude or limit our liability for (a) fraudulent misrepresentation: (b) death or personal injury arising out of our negligence: or (c) any warranty as to title or quiet possession implied by statute.

6. Replacement Software

- 6.1 We reserve the right to issue Replacement Software on computer disks, compact disks and electronically via web page downloads or e-mail.
- 6.2 You may install the Replacement Software on the number of computers or networks that accords with your Software licence agreement that you have purchased and make one copy of the Replacement Software in any computer readable format for back-up purposes only.
- 6.3 The copyright, design right and any other intellectual property rights in the source and object codes of the Replacement Software rest exclusively with us, for those parts of the Software originated by Us.
- 6.4 The Replacement Software may not be copied or intalled without our express consent in writing under such terms as we shall determine, or as permitted by the terms of the Licence you have purchased from Us.

7. General

- 7.1 This Agreement is personal to you and may not be assigned, sub-contracted, licensed, charged or otherwise dealt with or disposed of (whether in whole or in part) by you without our prior written consent.
- 7.2 This Agreement and all up to date literature at the Commencement Date concerning Support constitute the entire agreement between us relating to Support and supersede all other agreements and all other literature concerning Support whether written, oral, express or implied.
- 7.3 The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the remaining provisions, which shall remain in full force and effect.
- 7.4 Any business partner, reseller, distributor or dealer from whom you purchased the Software is not appointed or authorised by us as our servant or agent. Such persons have no authority (either express or implied) to enter into contract or grant any licence or provide any representation, warranty, condition or guarantee with or to you on behalf of us, or thereby bind us. We are not responsible for any modifications or mergers made to the Software by any such persons or any other third parties.
- 7.5 Any notice to be given under this Agreement shall if, delivered personally, be deemed given immediately or, if sent by registered first class post (or the nearest equivalent if not available), be deemed given three Working Days after posting to

the address of the party to be notified, or if sent by e-mail, be deemed given immediately subject to non receipt by the sender of an error message.

- 7.6 We shall not be liable to you for any failure to perform or for any delay in performance under this Agreement to the extent such non-performance or delay is caused by any circumstances beyond our reasonable control including, but not limited to: fire, war, civil commotion, any act of central or local government, any industrial disputes, lockouts and strikes of any third party, provided that if any period of default continues for more than 60 days you shall be entitled to terminate this Agreement by notice to us in writing.
- 7.7 Any failure by us to enforce any of the terms and conditions of this Agreement shall not be construed as a waiver of our rights and remedies under this Agreement which are cumulative and are not exclusive of any rights and remedies provided by law.
- 7.8 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 7.9 This Agreement shall be governed by and construed in accordance with English law and both parties submit to the exclusive jurisdiction of the English courts.

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