

Software @ SFU Library - Support Agreement

This Agreement for Support Services (the “Agreement”) is entered into between Simon Fraser University Library located in Burnaby, British Columbia, Canada (the “SFU Library”), and the customer (the “Customer”) identified on the statement of work (the “Statement of Work”) and/or invoice (the “Invoice”) prepared for the Customer. This Agreement establishes the terms and conditions pursuant to which the Customer wishes to obtain, and the SFU Library wishes to provide, technical support services.

1. Technical Support Services.

Subject to the terms and conditions of this Agreement, and in exchange for the payment of Support Fees the SFU Library agrees to provide certain technical support services to the Customer in connection with the Customer’s use of authorized versions of specific open source software (the “Supported Software”) for which the SFU Library is prepared to provide support. Capitalized terms used in this Agreement shall have the meaning indicated either in this Agreement in the context in which they appear or in the SFU Library’s Support Options, including the current list of Supported Software and Software Fees which are displayed on the Software @ SFU Library Website (<http://software.lib.sfu.ca>) and incorporated into this Agreement by reference (the “Support Options”).

2. Support Options & Scope.

The scope of services provided to the Customer under this Agreement is subject to: (a) the type of support specified for the Customer on the Statement of Work and/or Invoice; and, (b) the Support Options as of the date of the Statement of Work and/or Invoice. The SFU Library reserves the right to discontinue support of any of the Supported Software with notice to the Customer as set out in Section 4 below.. (See Section 4: Term; Renewal; Termination.)

3. Compensation.

Customer shall pay fees to the SFU Library (“Support Fees”) in exchange for the provision of technical support services pursuant to this Agreement. Support Fees shall be as described in the Support Options as of the date of the Statement of Work and/or Invoice.

Support Fees are due and payable no later than thirty (30) days after the issue date of the Invoice. Support Fees during any Renewal Term (as defined in Section 4, below) shall be equal to the aggregate amount set forth in the applicable Support Options for the Support Offering selected by the Customer forty-five (45) days prior to the commencement of such Renewal Term, and shall be due and payable no later than thirty (30) days after the commencement of such Renewal Term. Customer shall submit each Support Fees payment in one of the currencies identified in the applicable Support Options, and at the fee level identified for the particular type of currency. The SFU Library may elect to discontinue services to the Customer under this Agreement if timely payment is not received for an applicable term. The Customer shall pay all taxes, howsoever designated, to the extent attributable to this Agreement or to any part, service or material furnished hereunder.

4. Term; Renewal; Termination.

Unless start and completion dates are explicitly stated on the Statement of Work and/or Invoice, the term of this Agreement shall begin on the date specified on the Invoice. Notwithstanding commencement of the

term of this Agreement, the term of each annual Support Offering shall continue for the number of months stated on the Invoice (the “Initial Term”), which shall in no event be less than twelve (12) months. This Agreement may be renewed for successive renewal terms of the same length as the Initial Term (each a “Renewal Term”). The SFU Library will provide the Customer with an annual renewal notice at least (60) days prior to the expiration of the Initial Term or the then current Renewal Term. The Customer must provide the SFU Library with notice of its intent **not** to renew at least thirty (30) days prior to the expiration of the Initial Term or the then-current Renewal Term.

The SFU Library may terminate the term of this Agreement for any annual Support Options other than hosting services at any time and for any or no reason upon the provision of sixty (60) days written notice to the Customer, in which case the SFU Library shall provide the Customer with a pro rata refund of the applicable Support Fees for the remainder of the months in the then-current term of the Agreement. In the case of hosting services, the SFU Library will provide one hundred and eighty (180) days written notice to the Customer.

The SFU Library reserves the right to amend any Support Options from time to time in its sole discretion by informing the Customer via the Customer’s email address of record and posting the amendment on the Software @ SFU Library Website, and any such amendment may include material changes in the SFU Library’s support services to the Customer. Unless otherwise noted in an amendment, amendments shall automatically be deemed to take effect on the first day of the calendar month that occurs at least 30 days after the date that the SFU Library first posted the amendment. In the event that Customer objects to any such amendment, Customer may terminate this Agreement for any annual Support Options by providing the SFU Library with written notice thereof no later than the date that the amendment takes effect, in which case the SFU Library shall provide the Customer with a pro rata refund of the applicable Support Fees for the remainder of the months in the then-current term of the Agreement.

5. Professional and Workmanlike Services.

The SFU Library will use its good faith, commercially reasonable efforts to: (a) ensure that support services are conducted in a professional and workmanlike manner by qualified personnel; and (b) attempt to diagnose any failure of the Supported Software used by Customer to conform to any documentation currently available on the Software @ SFU Library Website and to advise the Customer of appropriate remedies, in accordance with the applicable Statement of Work and/or Support Options purchased by Customer. The SFU Library is not required to provide support services regarding the following, unless explicitly included on a Statement of Work:

- (a) any software other than the Supported Software;
- (b) any classroom training or on-site consulting;
- (c) design of any application, including layout work;
- (d) copy, proof, or similar, editing services;
- (e) patches or modifications to the source code of the Supported Software undertaken at a local, non-SFU installed site unless undertaken as part of custom programming services;
- (f) installation, configuration, or malfunctions of any part of the Customer’s computer or networking hardware equipment;
- (g) installation, configuration, or malfunctions of any part of the Customer’s operating system, including without limitation kernels, libraries, patches, and drivers;
- (h) data recovery as a consequence of Customer’s deletions, accidental or otherwise, of data; or
- (i) data modification that cannot be performed via existing software functionality.

6. Customer Responsibilities.

Customer shall always supply support requests in written form. Customer shall provide to the SFU Library all data that is relevant for resolving each support request. Relevant data may include, but is not limited to, log files, database dumps, program scripts, descriptions of the hardware and software environment, examples of inputs, and expected and actual outputs. The Customer is expected to respond in a timely manner to requests for additional information or feedback from SFU Library staff. In the case of contracted work with an agreed upon schedule, the SFU Library will not be responsible for any delays in meeting key dates if the Customer has not responded to information or feedback requests within 24 hours.

Customer acknowledges that it is the sole responsibility of the Customer, at all times, including specifically during all service functions performed by the SFU Library pursuant to this Agreement and undertaken on the Customer's local installation of the Supported Software, to protect and maintain an up-to-date and restorable backup of any and all databases, files, utilities, software and other systems which the SFU Library staff may directly access or in connection with which the SFU Library staff may offer advice.

If it is necessary for SFU Library staff to access the Customer's local installation, they will first request permission from the Customer who will be expected to provide IDs/passwords and appropriate access privileges. SFU Library staff will inform the Customer when the work is completed and access is no longer required to the Customer's local installation. It is the responsibility of the Customer to reset any IDs/passwords and associated access privileges.

Customer agrees that the use of the support services and the Supported Software is at their sole risk and the SFU Library is not responsible for any alleged or actual damages caused by or attributed to the use of the support services and the Supported Software. The SFU Library reserves the right to limit assistance to two (2) hours per incident.

Customer represents and warrants to the SFU Library that it:

- (a) is engaged in a lawful business enterprise;
- (b) can form legally binding contracts and is authorized to enter into this Agreement; and
- (c) is in compliance with all applicable laws appropriate to its location of business and nature of work.

Customer acknowledges that use of Support Options that include hosting services at the SFU Library is subject to all applicable local, provincial, national and international laws and regulations and Customer agrees not to violate such laws and regulations. Any attempt by any Customer to deliberately damage hosting services at the SFU Library is a violation of criminal and civil laws. The SFU Library reserves the right to seek damages from any Customer to the fullest extent permitted by law.

In addition, the Customer agrees not to post or transmit through the hosting services at the SFU Library any material or content that violates or infringes in any way the rights of others including but not limited to copyright and related intellectual property laws; solicits, encourages or promotes the use of illegal substances or activities that is unlawful, threatening, abusive, harassing, defamatory, libelous, derogatory, invasive of privacy or publicity rights, vulgar, obscene, bigoted or hateful, profane, scandalous, pornographic, indecent or otherwise objectionable; gives rise to civil or criminal liability; or otherwise violates any local, provincial or federal law. The Customer may not engage in any activity on the hosting services at the SFU Library that restricts or inhibits any other user from using the hosting services at the SFU Library by "hacking", "cracking", "spoofing", or defacing any portions of them.

The Customer may not knowingly post or transmit through the hosting services at the SFU Library any software or other materials that contain viruses, worms, time bombs, Trojan horses, or other harmful or disruptive component, political campaign materials; chain letters; mass mailings, spam mail, any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index,

"data mine", or in any way reproduce or circumvent the navigational structure or presentation of the hosting services at the SFU Library or its contents.

7. Data Ownership.

Any data, irrespective of format, created and uploaded by the Customer will be owned by the client or the existing copyright holder, and governed by the Customer's intellectual property provisions provided these are not in conflict with Section 6 or any other terms in this agreement. The SFU Library makes no claims on this data.

If the SFU Library or the Customer terminate the hosting agreement, final disposition of all online data will be governed by the Customer's intellectual property provisions, or failing that, removed from the SFU Library's online system. The SFU Library will deliver to the Customer a copy of all data in their existing file formats in use by the System at that time.

8. Applicability of GNU General Public License.

All of the Supported Software has been made available as open source software under the terms of the GNU General Public License (GPL). Any software development that occurs as a consequence of custom programming work for a Customer and is incorporated with the Supported Software will also be made available as open source software under the terms of the GNU GPL. The terms and conditions of the GNU GPL apply to any copying, distribution, or modification activities any Customer may wish to undertake independently.

9. Disclaimer of Warranties and Other Limitations.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SFU LIBRARY DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUPPORTED SOFTWARE, CORRECTIONS AND THE SERVICES PROVIDED HEREUNDER, INCLUDING PROMISES, REPRESENTATIONS AND WARRANTIES AS TO CONDITION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTY OF INFORMATION CONTENT OR SYSTEM INTEGRATION.

Without limiting the generality of the foregoing disclaimer, the SFU Library does not warrant that its advice or programming on behalf of the Customer will be error free.

The SFU Library disclaims all liability whatsoever to the Customer or any other party for any act or omission that may result in consequential, indirect, incidental, special or such other damages including but not limited to, any damage for lost profits, loss of data or loss of business, even if the SFU Library has been advised of the possibility of such damages.

In no event shall the liability the SFU Library to the Customer for any claim whatsoever related to this Agreement exceed the total amount of Support Fees paid for the Support Options that gave rise to the claim within the calendar year during which the claim arose.

10. System Security.

If the SFU Library is given access to the Customer's computer systems in connection with performance of support, the SFU Library shall not intentionally violate any security measures employed by the Customer and made known to the SFU Library in writing.

11. Legal Relationship.

The parties enter this Agreement as, and shall remain, independent contractors with respect to one another. Nothing in this Agreement is designed to create, nor shall create between them, a partnership, joint venture, agency, or employment relationship.

12. Notices.

Unless otherwise agreed to by the parties, any notice required or permitted to be given or delivered under this Agreement shall be delivered and addressed to the SFU Library at the address set forth in the Support Options, and to the Customer at the address indicated on the Invoice. Notice shall be deemed to have been received by any party, and shall be effective on the day given, if personally delivered or if sent by confirmed facsimile or electronic mail transmission, receipt verified, to a facsimile number or electronic mail address provided by the receiving party to the sending party for the purpose of receiving such notices;

Customer may change its address for notice purposes upon issuance of notice thereof in accordance with this Section. The SFU Library may change its address for notice purposes by changing the address set forth in the Support Options.

13. Force Majeure.

Neither party will be liable to the other by reason of any failure in performance of this Agreement if the failure arises out of the unavailability of communications facilities or energy sources, acts of God, acts of the other party, acts of governmental authority, fires, strikes, delays in transportation, riots, terrorism, war, or any causes beyond the reasonable control of that party. If a Force Majeure event occurs, the SFU Library will have up to five (5) business days to determine if and when support services resume.

14. Interpretation.

The headings used in this Agreement are for convenience only and are not intended to be used as an aid to interpretation. If any part of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

15. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia and the laws of Canada applicable therein.



16. Mediation.

If the parties disagree over an interpretation of this Agreement or whether a party or a Customer is in breach of any part of this Agreement, the parties shall in good faith enter into negotiations to resolve the disagreement and discuss the feasibility of resolving the disagreement by mediation or other means short of litigation. The parties shall cooperate in good faith in pursuing mediation or such other means.

17. Entire Agreement; Waiver.

This Agreement incorporates by reference the Invoice and all components of the applicable Support Options (collectively, the "Attachments"). This Agreement and the Attachments collectively contain the entire understanding of the parties with respect to the subject matter hereof, and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement, including (without limitation) any pre-existing support agreement.

For the SFU Library:

Name: Brian Owen

Title: Associate University Librarian, Processing & Systems

Signature:

Date: Jul 19, 2010

:sfu.support.agreement.100719

For the Customer:

Name (please print): _____

Title : _____

Organization: _____

Address: _____

Signature: _____ Date: _____