

# **Firetrust Support Services Agreement**

---

## **1.0 DEFINITIONS:**

**1.1 "Software"** shall mean the software programs in object code format licensed by Company from Firetrust Limited or one of its Authorized Partners. **1.2 "Remote Access"** means direct connection to the systems wherein the Software resides via the Internet, via high-speed, point-to-point network access between Company and Firetrust Limited.

## **2.0 SUPPORT SERVICES:**

**2.1 Services In General.** Firetrust Limited shall provide the services purchased on-line at <http://oss.firetrust.com> as outlined herein ("**Support Services**"), provided Company remains a compliant subscriber and has paid all monies due. This Agreement covers the Support Services that may be purchased on-line directly. These Support Services include, but are not limited to: 1) training services, 2) developer support services or 3) installation (phone guidance or remote access) support services. Detailed descriptions of what is included or the services offered in these Support Services can be found on the Firetrust web site at <http://oss.firetrust.com>. Firetrust Limited reserves the right to modify the terms and conditions of its Support Services from time to time and upon reasonable notice, provided that any such modification will not substantially diminish the level of Support Services that Company is then currently receiving.

### **2.2 Description of Services:**

**2.2.1 Developer Support Services:** Firetrust Limited shall provide Company with the developer support services as set forth in the applicable Order Form. Developer Support Services are not rendered on Company's facilities unless expressly agreed to in writing. The scope of the services offered are detailed further on Firetrust's website.

**2.2.2 Installation Support Services:** Firetrust Limited shall provide Company with installation support in the form of phone support ("Installation Guidance") or through Remote Access as further detailed in an accompanying Order Form or as ordered on-line at the Firetrust web site.

**2.3 Company's Responsibilities.** As a condition to the provision of Support Services, Company will (i) appoint two (2) employees of Company to serve as primary contacts between Company and Firetrust Limited, and will ensure that Company's Support Services inquiries are initialized and handled through these contacts; (ii) provide Firetrust Limited with reasonable access to all necessary personnel to provide information needed for the provision of Support Services; and (iii) provide Firetrust Limited with Remote Access.

## **3.0 PAYMENT:**

**3.1 Fees.** Company shall pay Firetrust Limited the fees in accordance with an applicable Order Form or as stated on the Firetrust website. Fees paid pursuant to an Order Form shall be payable within thirty (30) days following receipt of Firetrust's invoice unless such fees have already been paid on-line through the Firetrust web site. All fees specified are non-cancelable and non-refundable. All fees are payable in U.S. dollars. Overdue payments shall bear interest at the lesser of one and one half percent (1.5%) per month or the maximum allowed under applicable law.

**3.2 Taxes.** Company shall be solely responsible for all taxes (including sales, use, property and value-added taxes), duties and customs fees, excluding taxes based on Firetrust Limited's income.

## **4.0 TERM AND TERMINATION:**

**4.1 Term and Termination.** The Agreement shall commence on the Effective Date and shall

continue as per the services ordered in Exhibit A.

**4.2. Effect of Termination.** Termination of this Agreement shall not relieve Company's obligation to pay all fees that are owed by Company. The parties' rights and obligations under Sections 2.1 ("Fees"), 3.2 ("Effect of Termination"), 4.0 ("Ownership"), 5.3 ("Disclaimer"), 6.0 ("Confidentiality"), 7.0 ("Limitation of Liability"), 8.0 ("General") and 9.0 ("Definitions") shall survive termination of this Agreement.

**5.0 OWNERSHIP:** Firetrust Limited (and its licensors) retains title to, ownership, copyright and other proprietary rights of the Software, and all portions thereof, and any modification thereto or any products or deliverables created or delivered by Firetrust Limited during the course of rendering Support Services offered hereunder, and Company hereby assigns to Firetrust Limited and rights in and to such materials (excluding any Company customer data).

**6.0 WARRANTY:**

**6.1 By Firetrust Limited.** Firetrust Limited warrants that the services provided hereunder shall be rendered consistent with commercially reasonable industry standards.

**6.2 Exclusive Remedies.** For any breach of the warranty set forth in this Section 6, Company's sole and exclusive remedy, and Firetrust Limited's sole and exclusive liability shall be the correction of defective work so as to comply with generally accepted industry standards. If Firetrust Limited is unable to perform such services as warranted, Company shall be entitled to recover the fees paid to Firetrust Limited for the unsatisfactory services.

**6.3 Disclaimer.** THE WARRANTIES SET FORTH IN SECTION 6 ARE EXCLUSIVE AND IN LIEU OF AND FIRETRUST LIMITED DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE OR FITNESS FOR A PARTICULAR PURPOSE.

**7.0 CONFIDENTIALITY:** During the course of this Agreement, each party will be exposed to and otherwise become privy to a variety of information and material both verbally or in documents of the other party relating to its business, technical operations or activities, all of which is considered to be of a confidential and/or proprietary nature ("Confidential Information"). Confidential Information shall not include information which: (a) Already is, or later becomes, publicly disclosed through no breach of this Agreement; (b) Firetrust Limited, in writing, authorizes Company to disclose without restriction; (c) Company already lawfully knows at the time of disclosure, without an obligation to keep it confidential; (d) Company lawfully obtains from any source other than Firetrust Limited, provided that such source lawfully disclosed such information; or (e) Company independently develops without use of or reference to the Confidential Information. The parties agree to hold each other's Confidential Information in confidence for a period of five (5) years after disclosure of the Confidential Information or for a period of two (2) years after termination of this Agreement, whichever is earlier. The parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third party for any purpose, except that access to and the use of Confidential Information may be provided to those third parties that: (i) provide services to the recipient of Confidential Information; (ii) have a need to use and access such Confidential Information in providing such services; and (iii) are bound by an obligation of confidentiality at least as restrictive as the confidentiality restrictions of this Agreement. Each party agrees to take all reasonable steps required to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement

**8.0 LIMITATION OF LIABILITY: IN NO EVENT SHALL FIRETRUST LIMITED BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, INCURRED BY COMPANY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL FIRETRUST LIMITED'S LIABILITY HEREUNDER EXCEED THE AMOUNT OF FEES PAID BY COMPANY UNDER THIS AGREEMENT. THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN FIRETRUST LIMITED AND COMPANY AND FIRETRUST LIMITED'S PRICING REFLECTS THIS ALLOCATION TO WHICH THE PARTIES HAVE AGREED.**

**9.0 GENERAL:** This Agreement shall be governed by the laws of New Zealand. Any legal action or proceeding relating to this Agreement shall be instituted in a court of law in New Zealand, and each party hereby submits to the personal jurisdiction of such courts. Neither party may assign or otherwise transfer this Agreement to any person or entity without the other's written consent which shall not be unreasonably withheld. All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by first class mail to the applicable address listed in Firetrust Limited Registration Form or applicable Order Form. To expedite order processing, Company agrees that Firetrust Limited may treat documents faxed by Company to Firetrust Limited as original documents. Nevertheless, either party may require the other to exchange original signed documents. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement if the delay or failure is due to circumstances beyond the reasonable control of the non-performing party. This Agreement constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing.