DbvisitProtect

SUPPORT AGREEMENT

This Support Agreement ("**Agreement**") sets out the terms and conditions which apply to Support to be provided by Dbvisit to you for the Licensed Product as set out in the Order Document or as otherwise agreed from time to time.

1. Definitions

1.1 Capitalized terms in this Support Agreement have the meaning given to that term in the End User License Agreement, the current version of which can be found at https://dbvisit.com/legal

1.2 In addition, the following terms have the following meanings throughout this Support Agreement:

"**Dbvisit**" means Dbvisit Software NZ Limited, a New Zealand company (no. 9205860) based in Auckland, New Zealand, except where the Order Document expressly states that one of its affiliate companies located in your country enters into this Agreement, in which case, "**Dbvisit**" means that specified company.

"**Error**" means a defect in the Licensed Product which causes the Licensed Product not to operate substantially in accordance with the specifications published in the Documentation.

"**Licensed Product(s)**" means the software product(s) licensed by you pursuant to an End User License Agreement, provided that you have paid the applicable License Fees.

"**Release**" means any updated or corrected release of the Licensed Product from time to time issued by Dbvisit, but not including any New Products;

"**New Product**" means any new product, or any new version, add-on or additional module in respect of a Licensed Product containing a significant amount of rewriting, rework or new functionality which Dbvisit sells separately as a new product, additional product module or add-on subject to a new end user license agreement and/or a new License Fee.

"**Support**" means the support services to be provided by Dbvisit as described in Section 2.1;

"**Support Agreement**" means this agreement;

"**Support Fees**" means the fees in respect of Support set out in the Order Document;

"**Support Service Level Schedule**" means the support service level schedule found at https://dbvisit.com/legal, as amended by Dbvisit from time to time;

"**Term**" means the term in respect of Support under this Agreement set out in the Order Document; and

"**Terms of Business**" means this Agreement, the End User License Agreement and the Order Document.

2. Support

2.1 For so long as you pay all Support Fees and License Fees due and payable pursuant to this Support Agreement and the End User License Agreement and subject to Section 5, Dbvisit will provide you with the following services in relation to the Licensed Product:

(a) the provision of Maintenance Updates in accordance with Section 3; and

(b) error correction services in the form of telephone, web or email support in accordance with Section 4.

3. Maintenance Updates

3.1 Dbvisit will provide to you all Maintenance Updates released by Dbvisit for the Licensed Product during the Term.

3.2 If a Maintenance Update is not installed or installation is delayed by you by more than a year from release, Dbvisit may, subject to Section 5.5, at its discretion:

(a) elect not to provide Support; or

(b) require an additional amount to be paid by you for the provision of that Support.

4. Error correction

4.1 Dbvisit will use commercially reasonable endeavours to diagnose and rectify all reproducible Errors that materially affect the operation of the Licensed Product.

4.2 You must notify Dbvisit of any Errors in writing, with a written description of each claimed Error and the conditions under which it occurred, and the associated trace file(s) produced by the Licensed Product.

4.3 On receipt of a notification of an Error, Dbvisit will work to correct any such Errors that it can verify based on the information provided by you and may do any of the following:

(a) correct the Error;

(b) develop a workaround for that Error; or

(c) determine in good faith that the Error cannot be corrected as part of the then current releases of the Licensed Product (in which event Dbvisit shall use commercially reasonable efforts to correct or eliminate the Error in the next release of the Licensed Product).

4.4 If Dbvisit determines that the Error is due to a documented or undocumented Oracle, SQL Server or PostgreSQL error or other error unrelated to the Licensed Product, Dbvisit has no obligation to rectify the Error.

4.5 If you have purchased the standard level of Support:

(a) Dbvisit will be available to receive support queries within regular business hours and on regular business days (as defined in the Support Service Level Schedule); and

(b) Dbvisit will use commercially reasonable endeavours to respond to you within the target standard response times (response times to be measured in terms of business days and regular business hours only as defined in the Support Service Level Schedule, so that for example, if a target resolution time is four hours, this means four consecutive regular business hours).

4.6 If you have purchased the Comprehensive (Premium) level of Support:

(a) Dbvisit will be available to receive support queries in respect of priority level 1 matters 24 hours a day 7 days a week;

(b) Dbvisit will use commercially reasonable endeavours to respond to you in respect of priority level 1 matters within the target Comprehensive (Premium) response times set out in the Support Service Level Schedule (response times to be measured in terms of actual time on a 24 hours a day, 7 days a week basis);

(c) in addition to Sections 4.6(a) & (b) Dbvisit will provide to you the standard level of Support set out in Section 4.5 in respect of all other priority level matters.

4.7 In providing Support, Dbvisit will apply the priority ratings in respect of each matter raised as set out in the Support Service Level Schedule and notify you in respect of such priority. Dbvisit will use reasonable endeavours to respond and resolve each issue raised in accordance with the target times specified for the applicable priority rating in the Support Service Level Agreement.

5. Exclusions

5.1 Support does not include the diagnosis or rectification of any Error resulting from:

(a) your act or omission or the act or omission of a third party (including a third party Licensed Product), including your failure to install or upload a Maintenance Update, to maintain a proper operating environment or to use the Licensed Product in a manner consistent with the Terms of Business or the Documentation;

(b) the merger of the Licensed Product (in whole or in part) with any other software except as permitted by the End User License Agreement;

(c) your failure to implement recommendations or solutions previously advised by Dbvisit in respect of Errors;

(d) any repair, adjustment, alteration or modification of the Licensed Product by any person other than Dbvisit without Dbvisit's prior written consent;

(e) Oracle, SQL Server or PostgreSQL errors that are not reported directly back to Dbvisit through the feedback of SQL (structured query language);

(f) Oracle, SQL Server or PostgreSQL internal errors, Oracle, SQL Server or PostgreSQL faults and bugs, or Oracle, SQL Server or PostgreSQL system errors;

(g) a fault in the equipment or in any other software operating in conjunction with or closely with the Licensed Product; or

(h) causes other than ordinary use.

5.2 In addition to Section 5.1, Support does not include the rectification of:

(a) lost or corrupted data; or

(b) loss, damage or faults caused directly or indirectly by any alteration, upgrade or new release of any software operating in conjunction or closely with the Licensed Product.

5.3 Dbvisit may, at its discretion, at your request, provide Support in the circumstances set out in Sections 5.1 and 5.2. Dbvisit shall be entitled to charge additional charges for those services and will notify you of such fees on request.

5.4 You may only receive Support if all Licensed Products are properly licensed under a current End User License Agreement and Support Fees have been fully paid for all Dbvisit Licensed Products at your company.

5.5 Support will only be provided for issues (including those caused by you) that are demonstrable in the then current Release and the immediately preceding sequential Release, running unaltered and on certified hardware, database and operating system and configuration. Support will not be provided in respect of any Release when the second subsequent Release has been made available by Dbvisit.

6. Customer assistance

6.1 You must provide all of the access, facilities, information, cooperation and assistance that Dbvisit may reasonably require to fulfil its obligations under this Support Agreement.

7. Support Fees and invoicing

7.1 You must pay the Support Fees for the provision of Support.

7.2 Dbvisit will provide you with an invoice for all amounts due and payable under this Support Agreement. You must pay the sum set out in each invoice within 30 days of the date of the invoice in accordance with the electronic transfer details set out in the Order Document. Unless otherwise stated, all amounts payable under this Support Agreement:

(a) are exclusive of any sales tax, goods and services tax or value added tax payable which must be paid by you, if applicable, at the time of payment of each invoice; and

(b) shall be paid gross without deduction of any withholding taxes and, if subject to any withholding taxes, you shall ensure that such sum is paid to Dbvisit as shall, after deduction of any withholding tax, be equivalent to the amount due.

7.3 Dbvisit may change the Support Fee at the end of the Term provided that any change shall not cause the annual Support Fee to exceed 25% of the then current license fee for the Licensed Product or an annual increase of 3% whichever is the highest.

8. Term and termination

8.1 Subject to Sections 7.1 and 7.2, this Support Agreement will commence with effect from payment of the License Fee in respect of the Licensed Product in accordance with the End User License Agreement and will continue for the duration of the Term.

8.2 Support provided prior to the date of this Support Agreement shall be deemed to have been provided on the terms of this Support Agreement.

8.3 You may terminate this Support Agreement at any time without cause by giving 90 days' written notice to Dbvisit. No refund of Support Fees will be payable to you in respect of any termination.

8.4 If you fail to pay the Support Fees within 45 days of the due date specified in Section 7.2, Dbvisit may immediately suspend the provision of Support or, at Dbvisit's sole discretion, terminate this Support Agreement.

8.5 Termination of this Agreement is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination.

8.6 You will be liable to pay any outstanding invoices and for any Support provided by Dbvisit prior to termination within 10 Business Days of termination of this Support Agreement.

8.7 Termination of this Support Agreement does not affect the End User License Agreement. However, if the End User License Agreement terminates for any reason, then the Support Agreement will automatically terminate and no refund of any unused portion of the Support Fees paid for the Term will be paid.

8.8 At the expiry of the Term, provided that the Release you are operating continues to be currently supported by Dbvisit, you will be deemed to have agreed to a new support agreement for a term equivalent to the initial term of this Support Agreement but on the then current terms and conditions provided on the Dbvisit website at the date of expiry. If you do not wish to enter into a new Support Agreement on this basis, you must notify Dbvisit in writing at least sixty (60) days prior to expiry of this Support Agreement.

9. Reinstatement after expiry or termination

9.1 If, after this Support Agreement has expired, or been terminated for any reason, you wish to reinstate Support, you agree to pay to Dbvisit a reinstatement fee computed as follows: a fee equal to the Support Fees that would have been payable from the date the Support Agreement expired or was terminated to the date of reinstatement plus a fixed reinstatement fee. The fee in this Section 9.1 is in addition to the Support Fees payable for the provision of Support. For the avoidance of doubt, this Section 9.1 survives termination of this Support Agreement.

10. Warranties

10.1 Dbvisit warrants to you that it will perform Support with commercially reasonable care and skill in accordance with generally acceptable industry practices using personnel reasonably trained and experienced in the Licensed Product.

10.2 EXCEPT AS SET FORTH IN SECTION 10.1, ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, IN RESPECT OF THE PROVISION OF SUPPORT ARE EXCLUDED TO THE FULL EXTENT PERMITTED BY LAW.

11. Liability

11.1 IN NO EVENT SHALL DBVISIT, ITS RESELLERS OR DISTRIBUTORS BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SAVINGS OR PROFIT, LOST DATA OR BUSINESS INTERRUPTION EVEN IF DBVISIT IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY). THIS LIMITATION PROTECTS DBVISIT AND ANY DISTRIBUTOR OR RESELLER FROM WHOM YOU OBTAINED THE LICENSED PRODUCT. IN NO EVENT SHALL DBVISIT'S LIABILITY FOR DIRECT DAMAGES ARISING UNDER THIS AGREEMENT OR RELATING THERETO, EXCEED, THE SUPPORT FEES ACTUALLY PAID BY YOU FOR THE LICENSED PRODUCT THAT GAVE RISE TO THE LIABILITY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL

DAMAGES, SO THE FOREGOING LIMITATION MAY NOT APPLY TO YOU.

11.2 Without limiting the foregoing, Dbvisit will not be liable for any failure to comply with this Agreement or any delay or deficiency in any Support to the extent it results from:

(a) any acts or omissions by you or the performance of Support in accordance with your instructions;

(c) any inaccuracy in any material provided by you in relation to Support; or

(d) any circumstances beyond the reasonable control of Dbvisit.

12. Independent contractor

12.1 Dbvisit is an independent contractor and this Support Agreement must not be construed to create a joint venture, agency, trust or partnership relationship between you and Dbvisit.

12.2 Dbvisit is responsible for the salaries of Dbvisit's employees, redundancy or other forms of severance pay, and the fees and costs of its contractors, PAYE and other employee benefits.

13. **Payment default**

13.1 If you fail to pay any applicable fees or charges in respect of the Licensed Product or Support by the due date for payment specified in an invoice then you agree to pay, on demand, the following additional amounts: (a) interest on the unpaid License Fee at the rate of 15% per annum from the due date to the date of actual payment, (b) US$10 administration fee for every week that the License Fee remains unpaid and (c) the actual costs of collection incurred by Dbvisit.

14. **Governing Law**

14.1 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF NEW ZEALAND UNLESS A DIFFERENT STATE'S LAWS IS EXPRESSLY PRESCRIBED IN THE ORDER DOCUMENT ("**SPECIFIED STATE**"), IN WHICH CASE ONLY THE SPECIFIED STATE'S LAWS SHALL APPLY. THE PARTIES WILL INITIATE ANY DISPUTE RESOLUTION PROCEEDING IN NEW ZEALAND OR THE SPECIFIED STATE (AS APPLICABLE) AND IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN NEW ZEALAND OR THE SPECIFIED STATE. YOU WILL BRING ANY ACTION AGAINST DBVISIT ARISING OUT OF THIS AGREEMENT WITHIN ONE YEAR AFTER THE CLAIM ARISES, OR BE BARRED. If Dbvisit is required to enforce this Agreement or its rights, you irrevocably agree to receive legal notices and papers by electronic mail at your last known email address (Dbvisit will also attempt to send you a backup copy by regular mail or regular service).