



This document contains the terms and conditions of the Linux Ltd support services contract. All support and consultancy advice given by Linux Ltd to our customers is covered by the terms of this contract.

Release 3.2 – Oct 2009.

The booking form associated with this document contains the related signatures.

1.0 Contract Overview.

The contract that the customer has with Linux Ltd is outlined in the booking document and that document and these terms and conditions comprise the total of the contractual agreement between both companies.

1.1. Support Product Purchased

Linux Ltd provide a number of support products, ranging from ad-hoc call out and system repair to full on-site consultancy service. Please see your support file for the level of support and number of hours purchased.

1.2. Contract Details

1.2.1. Customers Point of Contact

All support calls should be made to Linux Ltd by telephone or email. These details are provided in your support file.

1.2.2. Contact Details

The customer should nominate who is expected to be the first point of call for all new support calls. The customer can request that only calls originating from this source be processed. This can be done to ensure a level of control on the usage of support hours purchased.

1.2.3. Site Address

Linux Ltd will only offer support to IT equipment and staff at locations designated by the customer to be targets for such support. Support can additionally be offered (within the existing support contract) to users working from home or other locations. It is the customer's responsibility to ensure that Linux Ltd are allowed to offer support to staff outside of any designated location.

1.2.4. Change Control

Linux Ltd will adhere to any change control processes that the

customer already has in place at the start of the contract or any that are brought into place during the contract. It is the customer's responsibility to ensure that Linux Ltd are notified about the existence of, or any changes to, a change control process.

1.3. Agreed Product Set

It is not always possible for Linux Ltd to support every product. This is especially the case for custom authored software or line of business applications. Therefore it is important that the customer has a current support contract with the author/manufacture of bespoke software solutions.

Linux Ltd will act as your point of contact between the customer and the software manufacturer if a support call needs to be placed and can be used to determine if the problem experienced actually lies with the product or some underlying part of the customers IT infrastructure.

2. Definitions

Agreement: Means these terms and conditions, the particulars page of this document and such other documents as have been incorporated by reference and as such may be amended from time to time as provided herein.

Linux Ltd: Means Linux Ltd Limited (registered in England and Wales with company number 03626685) whose registered office is at 55 Hoghton Street, Southport, Merseyside. PR9 0PG.

Time Unit: Each support call is recorded to the next complete quarter of an hour, half of an hour or hour depending upon the support product purchased.

Customer: Means the party named as the Company Name on the back page of this Agreement.

Linux Ltd Office Hours: Means 9am to 5pm, Monday to Friday, except statutory and public holidays.

3. Support Services Description

3.1. Support Services Agreement Description

Linux Ltd provide support through the purchase of hourly units of support. Each support call uses up an amount of these hours (or parts of hour) depending upon the active time Linux Ltd take on resolving the support issue. The booking form describes the minimum units that the customer can expect one support call to take. This minimum unit can range from 15 minutes to 1 hour

depending upon the level of support purchased. The purchase of these hours allows the customer telephone and remote support during Linix Ltd Office Hours.

Unused support hours at the end of a contract year will be carried over if the customer renews their contract for a subsequent year. The number of hours that a customer purchases should be suitable for their business need over the period of the contract unless the customer has purchased an ad-hoc support contract which allows calls when needed and variable monthly billing.

3.2. Organisation Wide Support

Linix Ltd Service Agreement is an organisation wide contract and does not place restrictions on the number of sites or users covered. However, Linix Ltd strongly recommends that the number of Customer Contacts is restricted to specific named individuals (see 1.2.1 above) to prevent unauthorised use or wasting of units. Linix Ltd cannot be held responsible for units used by an 'unauthorised' customer employee.

3.3. Time Units

Each support call logged will have the time taken to understand and resolve the issue recorded by Linix Ltd. The amount of time used at the end of each day will be recorded by Linix Ltd on their support timesheet and the total amount of used time will be deducted from the available time that the customer has already agreed to.

Different support products round time up to the nearest time unit. All time billing is completed in used units of time and not in exact minutes of time. The minimum time unit is described on the booking form and is never less than 15 minutes.

Support calls requested and resolved, in full or part, outside Linix Ltd Office Hours will be recorded at time + half a time support units used rounded to the nearest 15 minutes.

3.4. Remote Access

If the customer provides remote access into their systems for Linix Ltd to resolve support issues, then no extra charge will be made for support provided remotely.

3.5. On-site Access

If an issue cannot be resolved remotely then Linix Ltd will visit the customer site to fix the issue. Travel to the customer site is charged additional to the support hours that will be consumed by the visit.

Sites that are not within a reasonable travelling distance of Linix Ltd personnel and where an overnight stay is required will be charged at 50p per mile from Linix Ltd registered office and cost of accommodation and expenses. Distance as determined from

<http://maps.google.co.uk>. Reasonable is defined as less than ninety minutes, or one hundred miles, one way journey to the site).

A standard consultancy day is an eight hour day Monday-Friday (excluding UK public holidays) during the time window of 08:00 and 17:00. If work is to be undertaken outside of these times, it will be quoted for on an individual basis prior to commencing the engagement.

3.6. What Linix Ltd Will Do

(a) install any updated operating system (but not application) software releases supplied to Linix Ltd by software manufacturers and intended for incorporation into the System;

(b) where ordered by the Customer, set up and maintain command files for System start-up, System back-up and other batch processes required in the normal running of the System;

(c) monitor the System during the morning of each day that the Support Services are provided and advise on and correct potential problem areas in back-up procedures;

(d) carry out routine housekeeping on the System by tidying up files and tuning the System as and when it deems necessary; and

(e) advise on any problems associated with hardware or operating system software for which the Customer has contracted hardware or software maintenance;

3.7. System Checks

Linix Ltd will carry out System checks each morning for the following:

(a) confirmation of the creation of successful back-ups where the Customer has provided a suitable level of access and has advised Linix Ltd of all appropriate success and error status codes;

(b) the success/failure of certain overnight tasks (batch jobs) previously notified by the Customer to Linix Ltd in writing on or before the commencement of this Agreement, the Customer having also provided Linix Ltd with the necessary success or failure codes.

(c) the existence of any required daytime background tasks where the Customer has provided Linix Ltd with an appropriate means of testing;

(d) the occurrence of any hardware errors where these are capable of easy detection during the running of background tasks, and to report any failures arising from any of these checks to the Customer by email or telephone.

3.8. Support Services Do Not Include

Any form of hardware equipment maintenance or software

maintenance. Unless otherwise specified.

3.9. Out of Hours Support

Support taken outside office or on-site hours will be charged at one and a half time.

3.10. Support Call Method

3.10.1. Access

All support calls should be made to Linix Ltd by telephone or email.

3.10.2. Contacts

The Customer should specify their named contacts authorised to log support calls with Linix Ltd. This list of contacts will consist of a primary contact and secondary contacts. Authority to include additional secondary contacts will need to be performed by the primary contact.

3.10.3. Call Priority

Incoming calls can be designated by the customer as High, Medium or Low as a rating of priority when the call is initially opened. If the customer has more than one outstanding/current support call this value will be used to determine which should be worked on at a higher priority.

3.10.4. Service Level Agreement

The booking form describes the guaranteed time in which Linix Ltd will return a logged call or email with us regarding a support incident.

3.10.5. Call Closure

A call will be closed when it has been mutually agreed with Customer that the call has been resolved, or reached a final conclusion, or customer does not wish to use or expend further service units on the support call.

3.10.6. Reporting

Each support incident is recorded for billing and reporting purposes. Itemised billing is available to customer upon request.

3.11. Regular Review

To ensure that customers do not run out of credits a review of available credits occurs every few months.

3.12. Payment

Payment for support services for all orders will be by Monthly Account, payment taken by direct Debit at the start of the next month, unless the customer does not pass a credit check performed on starting the contract. If a customer does not have a credit agreement with Linix Ltd then payment will be required in advance.

Linix Ltd will regularly obtain credit reference information on your company to ensure that we can maintain current invoicing arrangements.

The invoice total each month will be 1/12th of the total contract amount + any travel expenses and other charges accrued in the previous month. Invoices will be compiled near the end of each calendar month.

For new contracts, Linix Ltd reserve the right to change the invoicing rate from 1/12 th of the contract total each month to the amount used each month.

All payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment at the rate prescribed in the Late Payment of Commercial Debts (Interest) Act 1998, as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002 from the date payable until payment is received. Such interest is due for payment immediately on invoice.

Notwithstanding the above provisions for late payment, in such event Linix Ltd may, at its option and without prejudice to any other remedy at any time after payment has become due, terminate or temporarily suspend this Agreement.

Any credit note issued by Linix Ltd in respect of over payment will be valid for 12 months from date of issue and will expire if not used within that time. Cash refunds are not available once a credit note has been issued.

3.13. Purchasing Additional Service Units

Additional support hours can be purchased at the current level of support defined by the contract by the customer at any time within the duration of the support contract for the current price of those hours. If enough extra hours are purchased to take the total purchased in the contract year into the next price bracket then the cost of each hour is reduced based on the Linix Ltd price scale.

3.14. Contract Renewal

Each support contract has a fixed term of twelve months unless extended during the initial contract negotiations. A contract will automatically roll over to a new 12 month period unless otherwise notified.

If at the end of a support contract any support time remains and the contract is not renewed, the remaining time expires and is not refundable.

The minimum renewal fee is the purchase of a support contract suitable for the business at the time of renewal. Recommendations on the size of this contract will be made by Linix Ltd based upon historical usage.

Once the contract is renewed, then the specified 'Roll Over %' of remaining support hours will be carried over from the previous

year to the renewed contract.

Linux Ltd request notification 90 days prior to the end of contract if the customer intends not to renew, this is to ensure a smooth hand-over of and that any open calls are closed.

3.15. Contract Termination Provision

This Agreement will commence from the date shown on the booking form and will continue for an initial term of one year unless otherwise stated on the booking form.

Termination without notice is allowed if either company is involved in any legal proceedings concerning its solvency, or commences liquidation (except for purposes of reconstruction) or ceases or threatens to cease trading, or generally becomes unable to pay its debts within the meaning of section 123 of the United Kingdom's Insolvency Act 1986.

In the event of a contract termination by either party reimbursement will be paid to the Customer by Linux Ltd on a pro-rata basis of the remaining unused hours. If the customer has used more hours than their current paid invoices cover then an invoice will be issued for complete payment of all outstanding monies. This invoice will be due within 30 days.

3.16. Customer Undertakings

3.16.1. Licences

The Customer will have valid software licences as advised by Linux Ltd for all software operating on the System throughout the term of this Agreement and will ensure that these licences do not expressly or impliedly prohibit third party system support or facilities management.

3.16.2. Maintenance Agreements

The Customer will keep the System's hardware and the software operating on the System maintained under support service contracts with the suppliers, manufacturers or publishers of such hardware and software or such other third party supplier of such services as may be agreed by Linux Ltd.

3.16.3. Customer Requirements

- (a) provide Linux Ltd and its staff assigned to perform the Support Services with all necessary information and assistance that may reasonably be required to enable Linux Ltd to carry out its obligations to the Customer under this Agreement;
- (b) notify Linux Ltd immediately of any System malfunction and provide Linux Ltd with complete information concerning the malfunction;
- (c) allow Linux Ltd and its staff full and complete access to the areas in which the Support Services are to be performed on the Customer's sites;

(d) allow Linux Ltd where required to have sole access to the System during Linux Ltd Office Hours in order that the Support Services can be provided and problems resolved;

(e) allow Linux Ltd to study its information and data for the purposes of rectifying problems and giving advice;

(f) provide telephone and modem facilities to Linux Ltd requirements for remote investigation of System malfunctions; and

(g) provide a direct telephone connection with handset in the computer room or ensure that a mobile telephone signal is obtainable within the room.

3.17. Health and Safety

The Customer will take all reasonable steps to ensure the health and safety of Linux Ltd staff while they are on the Customer's sites.

3.18. Limitation of Liability

The Customer acknowledges that it is the best judge of the value and importance of its data held on any computer system and will be solely responsible for:

- (a) instituting and operating all necessary backup procedures upon equipment which is at the Customer's premises to ensure that data integrity can be maintained in the event of loss of data for any reason;
- (b) satisfying itself that the specified backup procedures operated by Linux Ltd upon equipment which is at Linux Ltd premises are sufficient to meet the Customer's requirements for maintaining data integrity in the event of loss of data for any reason; and
- (c) taking out any insurance or other financial protection against loss or damage which may arise from loss of data for any reason.

3.19. Warranty and Repair Times

Linux Ltd does not provide any warranty or guarantee nor is any warranty or guarantee to be implied that it will be successful in undertaking any data reconstruction and Linux Ltd does not accept any liability in this respect.

Linux Ltd shall use its reasonable endeavours to perform the Support Services within any agreed time but any such times are estimates only.

The Customer is responsible for keeping the System insured against all risks including when the System is located at Linux Ltd premises.

3.20. Liabilities

Linux Ltd shall not be liable to the Customer for:

- (a) any loss of profits, revenue, contracts, data or anticipated

savings; or

(b) any consequential or indirect loss or damage however caused.

3.21. Notices

Any notice given under this Agreement by either party to the other must be in writing and delivered to the address shown on the back page of this Agreement, or to any other address notified in writing by one party to the other for the purpose of receiving notices, by personal delivery, courier, registered mail, or fax and will be deemed to have been given in the case of:

(a) personal delivery or courier, when delivered;

(b) mailing, three (3) working days after the date of mailing, or

(c) fax, when a written acknowledgement is received by the sender.

3.22. Law and Disputes

The parties shall attempt to resolve any dispute relating to this Agreement through negotiations between senior executives of the parties who have authority to settle the dispute.

If the matter is not resolved through negotiation, the parties may, at their election, attempt in good faith to resolve the dispute through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Effective Dispute Resolution in London. If the matter has not been resolved by an ADR procedure within thirty (30) days of the initiation of that procedure, or if either party does not wish to participate in an ADR procedure, the dispute may be referred by either party to the English courts and the parties submit to their jurisdiction for that purpose.

This Agreement is governed by English law.

3.23. General Terms of Sale

Linux Ltd has prepared this document in response to the Customers' requirement for a support service.

No contractual relationship shall arise between the parties, and Linux Ltd will not perform any services or deliver any products or services until both parties have signed this agreement on the back page or signed the associated booking form. This Agreement has been negotiated in good faith by the parties and each clause of this Agreement has been separately negotiated and specifically agreed upon for inclusion by the parties. Each and every limit and exclusion in this Agreement is independent and severable from the other and if held unlawful or unenforceable that part shall be struck out and the remainder shall remain in effect.

The prices contained in this document are exclusive of value added tax (which shall be charged at the rate applicable at the date of invoice) and shall be exclusive of expenses. The clause headings in this Agreement have been inserted for the purpose of convenience only and shall not be taken into account in its interpretation. Except with respect to the obligation of the Customer to pay any sums due, neither party will be liable for total or partial failure to perform its obligations in this Agreement during any period in which its performance is prevented or hindered by circumstances beyond its reasonable control.

Whilst every effort has been made to ensure the accuracy of the information and statements contained in this document, such statements are based on Linux Ltd understanding of the information and data supplied by Customer as set out in this Contract.

As such, Linux Ltd makes no warranty, representation or undertaking as to the completeness or accuracy of the information contained herein and shall not be responsible for any reliance placed thereon nor for any loss or damage suffered as a result of such reliance, save to the extent that such information forms part of or is otherwise incorporated into any subsequent legally binding agreement entered into by Linux Ltd and Customer. Other than expressly stated in this proposal, Linux Ltd excludes all express or implied conditions and warranties (whether imposed by statute or otherwise).

The information and data supplied by Linux Ltd in this document and any attachments or enclosures thereto are confidential or proprietary (hereinafter referred to as "Confidential Information") to Linux Ltd. Customer shall only be entitled to use Confidential Information disclosed by Linux Ltd for the sole purpose of evaluating this proposal and for no other purpose whatsoever. Customer shall not disclose Confidential Information other than to its employees, representatives, advisers and any third parties who need to know the same for the purpose of evaluating the proposal and Customer shall procure that any of its employees, representatives, advisers, and any third parties to whom it may properly disclose the Confidential Information are aware of the obligation of confidentiality and undertake to comply with it. Any copying, distribution, reproduction or disclosure of the Confidential Information contained in this document is not permitted without the prior written permission of Linux Ltd.