



Datapel Enhancement & Support Agreement (ESM)

Product: ("Product")

Datapel Product Edition

Client: ("Company", "Client")

Address

Coordinator

.....

I acknowledge that I am an authorised officer of the Company and have authority to accept these terms and conditions for product installation, activation, and approval of the ESM agreement.

Product: ("Product")

I acknowledge that I am an authorised officer of the Company and have authority to accept these terms and conditions for product installation, activation, and approval of the ESM agreement.

SAMPLE

Signature

Print Name

Client-appointed Coordinator or Representative*

Signature

Print Name

Witness

Please fax-back to 1300-134-955 and present original of this confirmation letter to your Datapel Representative prior to payment or installation.



Terms and Conditions of Sale

The following terms and conditions govern the sale of Datapel Systems, Pty Ltd. ("Datapel") Products and Support Services.

Definitions

"Products" means hardware, Software, documentation, accessories, supplies, parts, and upgrades that are determined by Datapel to be available from Datapel upon receipt of Customer's order. "Custom Products" means Products modified, designed, or manufactured to meet Customer Requirements.

"License Fee" means the fee or fees designated by Datapel for Use of Software. Different License Fees may apply to particular Software if more than one Software License is available for that Software.

"Software" means one or more programs capable of operating on a controller, processor or other hardware Product ("Device"), and related documentation. Software is either a separate Product, included with another Product ("Bundled Software"), or fixed in a Device and not removable in normal operation ("Firmware").

"Software License" means the Software license grant and general license terms set forth herein or as part of the End User License Agreement ("EULA"). Each Software License has a corresponding License Fee.

"Support" means Software updates, and maintenance; training and other standard support services provided by Datapel. "Custom Support" means any agreed non-standard support, including consulting and custom project services.

"Use" means storing, loading, installing, executing, or displaying Software on a Device.

"Specifications" means a document that provides information specific to a Product.

"Attachments" means attachments that describe or otherwise apply to the sale or license of the Product or Support. If there are any conflicts between the various documents, those of an Attachment prevail over those of this Agreement. Customer accepts and is bound by the terms of the Agreement and the applicable Attachments by accepting delivery of the Product or Service.

Prices/Charges

The amount payable for Product or Service will be based on one or more of the following types of charges: One-time and recurring, time and materials, or fixed price. Additional charges may apply (such as special handling or travel related expenses). Where possible Datapel will inform Customer in advance whenever additional charges apply. Prices are valid for the period quoted by Datapel for the applicable purchase agreement ordering period, whichever expires first.

Product prices for an order remain valid for thirty (30) days from the original order date unless otherwise quoted by Datapel. Change orders that extend Delivery beyond those validity periods become new orders at prices in effect when Datapel receives the change orders. Support prices, except for Custom and prepaid Support, may be changed by Datapel upon sixty (60) days written notice. An increase applies on the first day of the invoice or charging period on or after the effective date Datapel specifies in the notice.

Prices are exclusive of, and Customer will pay applicable sales, use, consumption, goods and service, value added or like taxes, unless Customer has provided Datapel with an appropriate exemption certificate for the Delivery jurisdiction.

Orders

All orders are subject to acceptance by Datapel. Product orders must specify Delivery within ninety (90) days from order date, unless otherwise agreed or quoted by Datapel.



Delivery

Datapel will make reasonable efforts to meet Customer's Delivery requirements. If Datapel is unable to meet Customer's Delivery requirements, alternative arrangements may be agreed. In the absence of such agreement, Customer's sole remedy is to cancel the order.

Shipping, Risk of Loss or Damage, and Title

Datapel will ship according to Datapel's standard commercial practice, and risk of loss or damage and title will pass from Datapel to Customer upon delivery to the Datapel designated carrier for shipment to Customer or its designated location. Thereafter, Customer assumes the risk of loss or damage and title will pass to Customer. Shipping and handling are additional unless otherwise expressly indicated at time of sale. If Customer requested special packing, or shipping instructions are agreed to by Datapel, charges will be billed separately to Customer. Customer must notify Datapel within five (5) days of the date of the invoice if any part of the purchase is incorrect or damaged. Ownership of all Software, Custom Software, and Products remain with Datapel until paid in full by Customer.

Installation and Acceptance

Product installation information is available with Products, on quotations or upon request. Installation by Datapel, when included in the purchase price, is complete when the Product passes Datapel's standard installation and test procedures. For Products without installation included in the purchase price, acceptance by Customer occurs upon shipment from Datapel. For Products with installation included in the purchase price, acceptance by Customer occurs upon completion of installation by Datapel. If customer schedules or delays installation by Datapel more than thirty (30) days after delivery, Customer acceptance of the Product(s) will occur on the 31st day after Delivery.

Payment

Payment terms are subject to Datapel credit approval. Unless otherwise stated, payment is due ten (10) days from Datapel's invoice date. Datapel may invoice parts of an order separately. Invoices for contractual support services and maintenance will be issued in advance of the Support period. Datapel may discontinue supply of product/services if Customer fails to pay any sum due, or fails to perform under this or any other Datapel agreement if, after ten(10) days written notice, the failure has not been cured. Amounts delinquent beyond the payment due date are subject to a 5.5% per month late fee prorated for the number of days past due.

Warranty

Datapel warrants for a period of ninety (90) days from the date of Datapel's shipment of Software, Products, or Custom Software to Customer, that Software will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the Device designated by Datapel. Datapel further warrants that Datapel owned standard Software will substantially conform to Specifications. Datapel does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer. Datapel does not warrant that the operation of Products will be uninterrupted or error free.

If Datapel receives notice of defects or non-conformance to hardware Specifications, or substantial non-conformance to Datapel owned standard Software Specifications during the warranty period, Datapel will, at its option, repair or replace the affected Products.

The warranties provided herein will apply only to those Products and Support which are branded by Datapel. Datapel does not warrant any third party Products or Support even if included with other Datapel Branded



Products or Support. Furthermore, Datapel provides all such third party Products and Support AS IS. However, the original manufacturers or suppliers may provide their own warranties as specified in the documentation accompanying such third party Products and Support.

The above warranties do not apply to defects resulting from:

- 1) Improper or inadequate maintenance by Customer;
- 2) Customer or third party supplied software, interfacing or supplies;
- 3) Unauthorised modification;
- 4) Improper use or operation outside of the Specifications for the Product;
- 5) Abuse, negligence, accident, loss, or damage in transit;
- 6) Improper site preparation; failure to attend or review training documentation; or
- 7) Unauthorised maintenance or repair.

THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TO THE EXTENT PERMITTED BY LAW, DATAPEL SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.

Special Conditions

Other System Considerations

This software requires a minimum operating environment of Microsoft Terminal Services currently supported as of the agreement date or equivalent RDP software, with appropriate licenses and Microsoft SQL Server Express currently supported as of the agreement date. Unless specifically noted quotations do not include any PC Workstation Hardware or Software for individual users. MYOB accounting software and/or support is NOT provided as part of this quotation or the fees associated herein.

Implementation Considerations

All costs associated with implementation are non-refundable. If the Warehouse Management System does not perform as per our documented specification and Datapel Systems Pty Ltd have been given an express opportunity to remedy any defect or anomaly without success then given mutual agreement a refund of up to a maximum of 50% of Product Costs paid by the customer will be honoured on the return and un-installation of all Datapel Systems Pty Ltd. Software and Hardware products. Where other third party products are sold as part of the solution they may or may not be refundable and are dependent on the suppliers policy.

NOTE: (E&OE)



Software Enhancement, Support & Maintenance (ESM) Agreement

THIS AGREEMENT IS MADE ON THE DATE OF SIGNING BETWEEN THE ACCEPTING COMPANY

- ABN - ("CLIENT")

AND

Datapel Systems Pty Ltd ABN 83-104-399-466 ("DATAPEL").

Definitions and interpretation

Where commencing with a capital letter:

"Maintained Software" means the registered copy of the Datapel Product licensed to CLIENT.

"Support Contact" means the person authorised by to communicate with Datapel to request and receive the Maintenance Services. The Support Contact may be CLIENT, CLIENT employee, or an agent or consultant of CLIENT who provides services directly to CLIENT as the Licensee of the Maintained Software. The Support Contact should be knowledgeable about how the Maintained Software is being used and about the computer hardware and operating software upon and with which Maintained Software is executed.

"Issue" means a defect in the distribution media or material difference between the operation of the Maintained Software and the description of the operation of the Maintained Software as provided in current end-user documentation provided for the Maintained Software by Datapel.

"Correction" means replacement distribution media or corrective code or documentation that rectifies an Issue as described above. Correction includes, but is not limited to, workarounds, support releases, update disks, immediate correction disks, component replacements and patches. Datapel may, at its discretion, modify the end-user documentation to

- (i) remove inaccuracies in the documentation, or
- (ii) describes changes, modifications or improvements made to the Maintained Software.

"Priority 1 Issue" means an Issue in the Maintained Software which causes substantial downtime of the system, or which causes data corruption, or which otherwise renders the Maintained Software unusable. Issues given this priority have no viable workaround or avoidance procedure.

"Priority 2 Issue" means a significant Issue in the Maintained Software which results in inconvenience to users of the Maintained Software, but for which a workaround or avoidance procedure is available

"Priority 3 Issue" means a Issue in the Maintained Software which can easily be avoided or detoured. For example errors in the documentation receive this priority.

"Agreement" means these Terms and Conditions of Datapel support and maintenance agreement.

"Enhancement and Support Fees" means the periodic payments due from CLIENT to DATAPEL as described in "Schedule A: Fees" that entitles CLIENT to the maintenance and support services described in this Agreement.



1. APPLICABILITY OF DATAPEL LICENSE AGREEMENT

This Agreement and all software, documentation and media provided under it is subject to all the terms and conditions of the Datapel End User Software License Agreement which exists between CLIENT and Datapel, including the Disclaimer of Warranty and Limitation of Liability.

2. UPGRADE RELEASE

Datapel intends at least once per calendar year to prepare an upgrade release of the Maintained Software which will contain replacements for all or some of the existing Software set, but cannot promise to do so. If prepared, CLIENT will be made aware of this upgrade release and any additional fees and charges payable to apply the upgrade if any.

3. FIXES TO REPORTED ISSUES

In response to a confirmed Issue in the Maintained Software, Datapel shall use reasonable efforts to provide on an as-needed basis at its discretion a Correction in the form of a workaround, support release, update, immediate correction, or electronic transfer equivalent, component replacement, patch, major upgrade release, or other suitable form, but Datapel cannot guarantee to do so.

When provided under this Agreement, such Correction will be supplied without additional charge. Datapel reserves the right to discontinue Maintenance Services without notice on a past workaround, support release, update disk or immediate correction disk, or electronic transfer equivalent, component replacement, patch or other form of Correction after a subsequent major upgrade release, support release, or update disk or electronic transfer equivalent containing a Correction of the Issue.

4. ACCESS TO DATAPEL SUPPORT STAFF

4.1 Datapel Product Support Staff are available via email or priority telephone number to give CLIENT assistance and advice on Datapel products or to receive Issue reports during normal working hours West Coast Time and at the address listed in the schedule. Datapel may allocate CLIENT's support request based on availability of staff and experience to a named individual at our discretion. Occasionally the Product Support Staff will not be available while they are attending to other company obligations. CLIENT may also use regular or overnight delivery services or direct telephone numbers to communicate with our Product Support staff once assigned to a named individual.

4.2 Our Product Support staff will, with CLIENT's assistance if necessary, investigate a suspected Issue by attempting to reproduce it after receiving CLIENT's Issue report as per Section 6 below.

5. SOFTWARE NOT COVERED BY THIS AGREEMENT

5.1 Software not covered by this Agreement includes any Maintained Software which has been altered or modified by CLIENT or by a third party or persons not authorized by Datapel and also includes any combination of Maintained Software and other software not covered by this Agreement.

5.2 Software not covered by this Agreement includes a release of Maintained Software for which Maintenance Services have been discontinued.

5.3 Software not covered by this Agreement includes anything caused or contributed to by the CLIENT in any way whatsoever.



- 5.4 Software not covered by this Agreement includes Issues resulting from CLIENT hardware.
- 5.5 Software not covered by this Agreement includes issues that do not significantly impair or affect the operation of the Maintained Software.
- 5.6 Software not covered by this Agreement includes Maintained Software used on a computer or operating system other than that specified by CLIENT and accepted by Datapel as per minimum recommended operating specifications and configurations.
6. CLIENT RESPONSIBILITIES
- 6.1 CLIENT agrees to report all suspected Issues through CLIENT's Support Contact to the Datapel Product Support staff. Reports will include at minimum a description sufficient for Datapel to reproduce the suspected Issue. Failure to provide this minimum description may cause delays in responding to the Issue. CLIENT agrees to use reasonable efforts to assist Datapel in its efforts to find Corrections to confirmed Issues reported by CLIENT at CLIENT's cost.
- 6.2 CLIENT agree to install and use the newest release or update disk for the Maintained Software sent to CLIENT by Datapel within thirty (30) days of receipt.
- 6.3 In all contacts with Datapel Product Support, CLIENT agree to provide the product serial number given to CLIENT by Datapel, along with CLIENT's name and the name and address of the company or individual contracted for the maintenance.
7. ADDITIONAL SERVICES AND CHARGES
- 7.1 Datapel may offer additional services such as training and consulting under separate agreements. Such services can be performed at a site and time mutually agreeable. These services are normally charged on a time and materials basis including expenses and are subject to availability.
- 7.2 Datapel reserves the right to charge for services outside of the range of normal support services at the rate of AUD \$150 per hour and such charge rate for support outside of the range of normal support services may be reviewed by Datapel from time to time. Such services considered outside of the range of normal support services are
- (1) debugging application coding errors in a customer's application,
 - (2) debugging problems in non-Datapel supported products, or in combinations of Datapel supported and non-supported products where the problem occurs in the non-Datapel product, and
 - (3) other cases where it is judged highly likely that the suspected problem is not the responsibility of Datapel.
- 7.3 After the first month following Acceptance of the Maintained Software by CLIENT and after one month following the signing of this Agreement, Datapel's normal support service for Priority 3 Issues, or where a workaround has been provided to CLIENT for a Priority 2 Issue, consists of up to three telephone calls per week and each call may be up to twenty minutes duration. Datapel reserves the right to charge for calls and man-hours used in providing support to non urgent Priority 2 Issues and Priority 3 Issues which are considered outside of the range of its normal support services.
- 7.4 When a situation occurs where a reported problem is likely to fall outside of the range of supported services, CLIENT will be advised of the potential of incurring charges to have Datapel work on the problem. An estimate of the cost of the additional services will be prepared and delivered to CLIENT, by appropriate means, for CLIENT's approval and agreement. Should Datapel find that the problem is, indeed, caused by a supported product, no charges will be incurred. However, if it is proven that the



problem is not the responsibility of Datapel, unless otherwise agreed, CLIENT will be charged for the time spent at the rates specified in the service agreement. Should CLIENT not agree that the requested service falls out of the bounds of supported services, CLIENT's Datapel sales person will be CLIENT's representative at Datapel to mediate the issue for CLIENT.

7.5 Reasonable shipping, handling, media and user documentation charges in connection with the provision of the upgrades and service shall be payable by CLIENT when outside the range of normal support services.

8. PAYMENT

The Enhancement and Support Fees must be no later than 14 days after the last day of the outgoing month. The Fee is as determined by the original Datapel Invoice and any subsequent changes to the CLIENT software and once paid provides rights under this agreement until terminating on the Maintenance Expiration date.

8.1 No refund will be given in consideration of Maintenance Fee for agreement cancellation or early termination.

9. TERM AND TERMINATION

9.1 This Agreement will be effective and services provided hereunder will commence as of the completion of Datapel:

- 1) Acceptance of payment of the appropriate Maintenance Fee or initial product purchase with Maintenance;
- 2) Registration of this Agreement on receipt of the signed agreement; and ascertaining proof of proper license for the Software designated on the Schedule.

9.2 The services provided hereunder would cease on the last business day of the month of the Maintenance Period which is one year from the commencement of services under this Agreement. The Maintenance Period commences as determined by Datapel as of the date of product purchase with maintenance, maintenance renewal or maintenance commencement, as appropriate. Datapel may change the Maintenance Fee without notice of which. The changed fee shall become effective upon renewal of this Agreement.

9.3 This Agreement will remain in effect unless terminated before the end of the Maintenance Period upon fifteen (15) days written notice by either party by reason of any violation of the terms and conditions of this Agreement.

9.4 Datapel may or may not notify CLIENT of the impending Maintenance Expiration Date. It is CLIENT's responsibility to exercise the option to renew maintenance prior to the Maintenance Expiration Date. To register for a further year of maintenance under this Agreement, simply pay the Maintenance Fee prior to the Maintenance Expiration Date and CLIENT will continue to receive maintenance services.

9.5 If CLIENT allows its maintenance period under this Agreement to expire, CLIENT must purchase an upgrade to the current version of the product in order to register for a new maintenance period. If CLIENT has previously received the current upgrade version, the start of the new maintenance period will be backdated to begin on the date that the previous maintenance period expired. CLIENT must then advise any changes to the schedule and return it to Datapel at the address denoted in schedule. CLIENT will then receive an invoice for the appropriate amount plus an additional fee to reactivate the maintenance agreement.



9.6 Datapel reserves the right to withdraw maintenance services on any or all Maintained Software or other products, and to alter the prices, terms, and conditions of the Maintenance Program, in advance of any maintenance renewal. Any such withdrawal or alterations will amend the Maintenance Program between CLIENT and DATAPEL as of CLIENT's next renewal date.

10. MISCELLANEOUS

CLIENT may not assign this Agreement to a third party without the prior written consent of Datapel. This Agreement and the Datapel End User Software License Agreement shall be the only Agreements between Datapel and CLIENT with respect to the Maintained Software. They cannot be modified except in writing and with the approval of both parties. These Agreements supersede all prior agreements, oral or written, relating to the Maintained Software.

11. GST

The Maintenance Fee described in Clause 8 of this Agreement is not inclusive of goods and services tax (GST). In relation to any goods and services tax payable for a taxable supply (as defined under GST law) by a party under this agreement, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice (as defined under GST law).

12. NOTICES

A Notice under this agreement must be in writing and may be given to the addressee by:

- (a) Delivering it to the mailing address of the addressee;
- (b) Sending it by pre-paid registered post to the address of the addressee; or
- (c) Sending it by facsimile to the facsimile number of the addressee, specified in the schedule and the notice will be deemed to have been received by the addressee on receipt.

A facsimile is deemed to have been received on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee.

13. SEVERANCE

Even if a part of this agreement is for any reason invalid or unenforceable, the remaining portion remains in full effect as if each party had signed without the invalid portion

14. FORCE MAJEURE

The parties release each other from any liability for failure to perform their obligations under this agreement which results from a Force Majeure Event. A party affected by a Force Majeure Event must immediately, on becoming aware of the occurrence of the event, notify the other party of the occurrence, its cause and the steps which the notifying party is taking to resume performance of its obligations under this agreement as soon as possible.

15. JURISDICTION

This agreement is governed by and must be construed in accordance with the laws of Western Australia. Each party:

- (a) Irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and all courts which have jurisdiction to hear appeals from those courts; and
- (b) Waives any right to object to proceedings being brought in those courts for any reason.



16. LEGAL COSTS

The parties must each pay their own legal and other expenses relating directly or indirectly to the negotiation, preparation and execution of this agreement and all documents incidental to it, and any and all action of and incidental to this Agreement and all matters related thereto.

17. INDEMNITY

In consideration of Datapel agreeing to enter into this Agreement with the Client and providing the services herein, and the Client agrees to indemnify and keep indemnified Datapel and each employee or agent of Datapel from and against all and any loss, damage, cost, charge, expense or other liability whatsoever in respect of any loss of or damage to property, loss of life or personal injury or other loss whatsoever that may arise in any way from the provision of the services pursuant to this Agreement.

Further the Client releases Datapel and each employee or agent of Datapel from all claims, actions, causes of action, proceedings and demands which the Client now have or, would or might at any time in the future have, against Datapel and each employee or agent of Datapel and all present or future liability of Datapel and each employee or agent of Datapel to the Client however caused in relation to or arising out of or in consequence of the provision of the services by Datapel pursuant to this Agreement .

The Client agrees not to make or commence or threaten to make or commence any claim, action, cause of action, proceeding or demand referred to in these paragraphs.

18. GROSS NEGLIGENCE AND WILLFUL MISCONDUCT

Notwithstanding anything in this Agreement to the contrary, the CLIENT shall have no obligation while under this Agreement to indemnify or hold harmless DATAPEL from any Losses arising as a direct result of DATAPEL's gross negligence, willful misconduct or acts of fraud.



Schedule A : Fees

1. MONTHLY ESM FEES

At the commencement of this agreement the monthly fee due pursuant to the Maintained Software is :
\$- exc GST per month.

2. LICENSE FEE

At the commencement of this agreement the perpetual Product License fee is : \$-,- exc GST.



Agreement Explainer – Plain English

Background

The preceding agreement governs the basis upon which Datapel will provide software enhancement, support, and maintenance pursuant to its products and services. This page does not form part of the agreement and is intended to provide further explanation to support and maintenance fees charged in consideration of, but not limited to, the following:

Ongoing administration costs for Datapel:

Administration and overhead costs associated with the maintenance of the CLIENT software design, development, testing and supporting documentation articles as created under the original software development agreement.

Incidental service and support costs:

Datapel provides phone support as part of the maintenance agreement and encourages the use of this facility during early adoption phases. The nature of the contact inquiry with Datapel can vary from technical support to service clarification.

All contacts incur a cost to Datapel and is typically addressed in the base maintenance fee using a probability of call * number of end-users * cost per incident factor, in this agreement the number per month and total call durations are capped.

Ongoing technology development:

Datapel delivers updated versions of its products each year. Applications connecting with the Datapel components need to be considered in the design of all new releases so as to not inconvenience customers with upgrade induced incompatibilities. This represents an ongoing cost to Datapel and depending on the number of customers affected can have significant impact on the development direction of the new Datapel components.

Minor updates and enhancements:

In the event that updates are required to Datapel software, the maintenance fee aids in any costs incurred by creation, communication, and dispatch of update materials.

Continuous Service:

Datapel has the goal of providing its customers with a continuous service of product support and enhancements. The Enhancement and Support fees make this possible.