

## A.C.K. Ltd Software Maintenance Agreement

THIS AGREEMENT is made and entered into this      day of      2006, by and between:

- (1) [customer] incorporated and registered in England and Wales with company number [nnnnnn] whose registered office is at [address1, address2, address3, address4] (**Customer**); and
- (2) **ACK LIMITED** incorporated and registered in England and Wales with company number 2583835 whose registered office is at 35 Grosvenor Road, Caversham, Reading, RG4 5EN (**Supplier**).

WHEREAS the Supplier is the distributor of certain valuable copyright software programs which the Customer is using under licence from the Supplier and for which maintenance is required to ensure the software conforms to Acquiring Bank and other requirements.

### 1. DEFINITIONS

In this Agreement except where inconsistent with the context, or as specifically defined below, all words and expressions will have the same meanings as defined in the Software Licence Agreement:-

“Annual Maintenance Fee” means the charge set out in Schedule 2 of this Agreement;

“Deliverables” means any item or work carried out and delivered pursuant to this Agreement as part of the Maintenance such as any upgrades, releases, software, fixes, patches, other technology, reports, spreadsheets and similar documents and any updates, additions or modifications to know-how documentation;

“Effective Date” means the date of this Agreement

"Licensed Programs" means the software licensed to the Customer by the Supplier as defined in the Software Licence Agreement; and support programs for which a licence fee is payable;

“Software Licence Agreement” means the software licence agreement to be entered into by the Customer and the Supplier on or about the Effective Date whereupon the Supplier shall grant the Customer a licence to use the Licensed Programs.

## 2. MAINTENANCE SERVICE.

- a) Subject to the payment by the Customer of an annual Maintenance fee, the Supplier undertakes to provide a Maintenance Support and Upgrade service for the Licensed Programs (Maintenance) for a minimum of 5 (five) years from the date of this Agreement.
- b) The level of Maintenance to be performed is defined in Schedule 1, and the Customer agrees to provide to the Supplier any information necessary to enable the cause of a problem to be diagnosed, and to actively assist the Supplier with the resolution of said problem.
- c) Unless the Customer has previously exercised the option set out in Clause 2(d) below, the Supplier will raise an invoice for the Annual Maintenance Fee for the following year prior to each anniversary date of this Agreement and the Customer shall pay the invoice within thirty days of receipt of the invoice.
- d) The Customer shall be entitled to terminate Maintenance, and to cease to pay Maintenance fees, by giving written notice of his intention to the Supplier not less than 10 days prior to the anniversary date. If, after such termination, the Customer subsequently requests maintenance from the Supplier, the Customer hereby agrees to pay to the Supplier all those Maintenance fees which would have been paid had Maintenance not been terminated by the Customer.
- e) The Supplier reserves the right at any time to assign the task of Maintenance to a third party or parties.
- f) The Supplier reserves the right to terminate maintenance at any time after 5 (five) years from the date of this Agreement.
- g) Termination of Maintenance, whether by the Customer or the Supplier, shall have no affect upon any other term or provision of this Agreement.

## 3. PRICE CONTROL

The Supplier agrees the charges for the Maintenance fee shall continue to be valid for a period of twelve months from the Effective Date of this Agreement. Thereafter, the Supplier may upon ninety (90) days' prior written notice to the Customer, vary the Maintenance fees once in each 12 month period beginning on each anniversary of the Effective Date provided that the Charges may not be increased by more than the increase in the UK Retail Price Index (or, if the relevant Index is no longer published, such other substitutable index agreed by the parties) at the date of such notification as compared to 12 months prior to such date.

## 4. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English courts.

## Schedule 1 - Maintenance Service

Maintenance of the Licensed Programs is defined to include the supply of the services listed below:

1. The supply of a temporary fix or the making of a reasonable attempt to make an emergency bypass to the problem but only if the Licensed Program yield any significant non-conformity with the specifications and if the Supplier diagnoses the problem as a defect in a current unaltered release of the Licensed Program.
2. Provide the Customer solutions to any known problems relating to the Licensed Program as said solutions are made generally available to licensees.
3. Provide technical telephone consultation to a suitably qualified Customer Contact between the hours of 9am to 5pm Monday to Friday (other than Bank Holidays). In the event the Supplier deems the telephone consultation requested by the Customer to go beyond the services which were contemplated by both parties under this Maintenance Service Agreement, then the Supplier shall notify the Customer of the terms and conditions under which the consultation requested by the Customer will be provided.
4. Provide the Customer with modification, improvements and refinements to the Licensed Program which are not separately priced by the Supplier these ensuring that the program remains compliant with the requirements of all relevant acquiring and authorising parties.
5. Provide the Customer with documentation detailing any change to the Licensed Program that has resulted in the release of a new version of the Licensed Program.

The Customer agrees to supply to the Supplier the information from which the Supplier can diagnose a problem and the Customer agrees to actively assist the Supplier with the resolution of the said problem.

All maintenance services will be provided directly to the Customer contact at a single Customer site, mutually agreed upon, which has a copy of the Licensed Program installed along with all corresponding technical documentation.

## Schedule 2 - Maintenance Service Fee

The maintenance fee will be £XXX (15% of £XXX) per POS per annum  
Minimum annual maintenance fee will be £XXX per annum

All prices quoted exclude VAT.

## Schedule 3 - Definition of support processes.

Customer will be responsible for First Line support services.

ACK Limited will be responsible for Second and Third Line support services with priority levels and escalation as defined below.

### Support Handling - Event Priority Definition.

- Critical (Priority A)** A problem that has crucial effects on the service, information and the operation of the system and requires immediate actions. Such events classified as Critical would include transaction files failing to reach the bank or inability to accept cards under normal trading conditions.
- Major (Priority B)** A problem which seriously influences the performance, the operation and maintenance of the systems and therefore requires fast reaction. Priority is lower than Critical Problems, as there are less immediate effects on system performance, technical operation and end users. This would include resolving issues involving investigation into corrupted transaction log files. Under these circumstances we would expect our diagnostic tools to have been used by First Line support provider with the results being sent to ACK for analysis.
- Minor (Priority C)** A problem which does not really disturb the function of the system and does not essentially influence the operation and service quality. This problem may be tolerated during operation.

### Response Commitments

Performance Level	Priority		
	A	B	C
Service Availability	working hours 9:00 to 17:00 working days (Monday to Friday) Excluding national holidays		
Response Time	4 working hours	12 working hours	15 working days
Neutralization Time	8 working hours	Next working day	15 working days
Provisioning of SW Updates	1 month	3 months	6 months

These response levels are conditional on the provision of full information being provided from the system to include a description of the problem and its effects on operation. ACK provide diagnostic tools which give comprehensive information on the operation of the system and if this information is required to diagnose the fault then response times will commence from the confirmed arrival of that information within ACK support.

**Contact ACK Ltd** for further details on:

Tel: 0118 948 2588, e-mail: [enquiries@ackltd.co.uk](mailto:enquiries@ackltd.co.uk) web site [www.ackltd.co.uk](http://www.ackltd.co.uk).

Control of reported support issue is maintained through the use of an internal call logging system. If a support issue cannot be handled within the initial telephone call during which the fault is being reported then it is registered within a support logging system. Support issues are allocated a unique identification number with date and time noted. A support engineer will be allocated to take responsibility for the fault taking action up to and including the involvement of software development engineers. Support logs are reviewed and escalated on a regular basis during the working day and within the relevant support contract periods.

<b>Escalation Level</b>	<b>1</b>	<b>2</b>
Contact	ACK Support	Martin Herbert
Title	Support Engineer	Managing Director
Email	support@ackltd.co.uk	martin@ackltd.co.uk
Telephone	0118 948 2588	0118 948 2588

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first before written.

SIGNED for and on behalf of the Supplier by:

NAME: Martin Herbert Signature: .....

POSITION: Managing Director

DATE: .....

SIGNED for and on behalf of the Customer by:

NAME: ..... Signature: .....

POSITION: .....

DATE:.....