

FERRET SOFTWARE LIMITED

SOFTWARE LICENCE AND SUPPORT AGREEMENT

AGREEMENT

FERRET SOFTWARE LIMITED, a New Zealand company (company number 1600446) (**FSL**) agrees to licence the Software and provide the Services to the Licensee, and the Licensee accepts that licence and agrees to pay for that licence and the Services, on the terms of this Agreement.

TERMS OF THE AGREEMENT

1 CHANGES

FSL may change the terms of the Agreement (including the Fees) at any time on giving no less than 30 days' notice to the Licensee. If the Licensee does not agree to the changed terms, it must terminate the Agreement by giving notice to FSL before the effective date of the changes. If the Licensee does not terminate the Agreement in accordance with this clause, it is deemed to have accepted the changed terms.

2 INTERPRETATION

2.1 Definitions: In the Agreement, the following terms have the stated meaning:

Term	Meaning
Additional Services	any services other than Support Services provided to the Licensee by FSL, which may include installation, integration, customisation and/or development services.
Agreement	this agreement titled <i>Ferret Software Limited Software Licence and Support Agreement</i> , including the Schedule and each Order.
Approved Purpose	the Licensee's lawful internal business purposes and subject to any maximum numbers of users and other requirements and restrictions (if any) set out in the Order.
Business Days	Monday to Friday, other than any public holiday in Auckland, New Zealand.
Confidential Information	the terms of the Agreement and any information that is obtained from the other party in the course of, or in connection with, the Agreement. FSL's Confidential Information includes the Software and the Documentation.
Documentation	the user and technical documentation designed to enable the Licensee to properly use and operate the Software, and includes any Revision of the documentation.
Effective Date	the date the first Order is accepted by FSL in accordance with clause 4.2.
Fees	the fees set out in the Order, as may be updated in accordance with the terms of the Agreement.

Term	Meaning
Force Majeure	an event that is beyond the reasonable control of a party, excluding: <ul style="list-style-type: none"> ▲ an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or ▲ a lack of funds for any reason.
GST	goods and services tax, value added tax, sales tax or equivalent tax payable under any applicable law.
Intellectual Property Rights	includes copyright, and all rights existing anywhere in the world conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.
Invoicing Start Date	the date upon which FSL first invoices the Licensee having completed the installation.
Licensee	the person on whose behalf an Order is submitted to FSL.
Order	has the meaning given in clause 4.
Permitted Users	the Licensee's personnel who are authorised to access and use the Software on the Licensee's behalf in accordance with clause 5.2.
Revision	includes a patch, update, upgrade or new version of the existing Software released to the Licensee by FSL.
Services	the Support Services and the Additional Services.
Software	the software products that FSL provides to the Licensee, including any Revision and any synchroniser, plugin or other add-on.
Support Services	the support services described in the Schedule.
Year	a 12 month period commencing on the Invoicing Start Date or any anniversary of the Invoicing Start Date.

2.2 Interpretation: In the Agreement:

- a clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
- b words in the singular include the plural and vice versa;
- c a reference to:
 - i a **party** to the Agreement includes that party's permitted assigns;
 - ii **personnel** includes officers, employees, contractors and agents, but a reference to the Licensee's personnel does not include FSL;
 - iii a **person** includes an individual, a company or other body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
 - iv **including** and similar words do not imply any limit; and

- v a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
- d no term of the Agreement is to be read against a party because the term was first proposed or drafted by that party; and
- e where any conflict exists between the documents comprising the Agreement, those documents have the following descending order of precedence:
 - i this document titled *Ferret Software Limited Software Licence and Support Agreement*, including the Schedule; and
 - ii the Orders.

3 LICENCE

FSL grants to the Licensee, and the Licensee accepts, a non-exclusive and non-transferable licence for the duration of the Agreement to use the Software and the Documentation solely for the Approved Purpose and on the terms and conditions of the Agreement.

4 ORDERS

- 4.1 **Submission of Orders:** If the Licensee requires any Software, any additional Software features, any variation to the permitted number of users or any other usage metric or restriction that applies to the Software and/or any Services, it must submit an order to FSL (**Order**). An order may be submitted by way of:
- a signing, and returning to FSL, a form titled *Order Confirmation* that is attached to a quote or proposal issued by FSL;
 - b submitting an online account sign-up, provisioning or variation form (or similar) accessible via FSL's website; or
 - c FSL's helpdesk ticketing system, by phone or email to FSL or by such other means as is designated by FSL from time to time.
- 4.2 **Order acceptance:** Unless specified otherwise by FSL:
- a the following Orders are deemed to be accepted by FSL on receipt by FSL:
 - i a signed *Order Confirmation* form that accepts a quote or proposal issued by FSL without amendment; and
 - ii any online account sign-up, provisioning or variation form (or similar) accessible via FSL's website; and
 - b any other type of Order is subject to acceptance by FSL. Acceptance will take place on the earlier of FSL confirming acceptance by email, commencing supply or the relevant Software or Service, or taking any other action to fulfil the Order.
- 4.3 **Effect of Orders:**
- a Each Order accepted by FSL in accordance with clause 4.2 forms part of, and is governed by, the Agreement.
 - b By submitting an Order, the Licensee accepts the terms of the Agreement. If the Licensee does not accept the Agreement, it is not authorised to access and use the Software, and it must not install the Software or have it installed on its behalf.

5 LICENCE CONDITIONS

- 5.1 **Conditions:** The Licensee must:
- a use the Software and the Documentation for lawful purposes only and must not copy (except making copies exclusively for the Licensee's own back-up purposes), reproduce, translate, decompile, reverse-engineer, resell, modify, vary, sub-license or otherwise deal in the Software or the Documentation except:

- i as expressly provided for in the Agreement; or
 - ii to the extent expressly permitted by any law or treaty that is in force in the Licensee's jurisdiction where that law or treaty cannot be excluded, restricted or modified by the Agreement;
 - b ensure the Software and the Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;
 - c maintain all proprietary notices on the Software and the Documentation;
 - d not transfer, assign or otherwise deal with or grant a security interest in the Software, the Documentation or the Licensee's rights under the Agreement;
 - e not challenge FSL's ownership of (including the Intellectual Property Rights in) the Software, the Documentation or any other item or material created or developed by or on behalf of FSL under or in connection with the Agreement; and
 - f notify FSL in writing immediately after it becomes aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the Software or the Documentation.
- 5.2 **Permitted Users:** Without limiting clause 5.1, no individual other than a Permitted User may access or use the Software. The Licensee may authorise any member of its personnel to be a Permitted User, provided that the maximum number of users set out in the Order is not exceeded. The Licensee must procure each Permitted User's compliance with clause 5.1 and any other reasonable condition notified by FSL to the Licensee. A breach of any of the Agreement by any of the Licensee's personnel (including, to avoid doubt, a Permitted User) is deemed to be a breach of the Agreement by the Licensee.

6 SUPPORT SERVICES & ADDITIONAL SERVICES

- 6.1 **Support Services:** FSL must provide the Licensee with the Support Services in accordance with the Schedule, provided the Licensee has:
- a paid all Fees due;
 - b maintained a proper operating environment for the use of the Software in accordance with any guidance from FSL, including in the Documentation; and
 - c complied with the Agreement and the Documentation.
- 6.2 **Additional Services:** Unless expressly stated in the Order or otherwise agreed in writing with FSL, the Agreement does not cover, and the Fees do not include fees for, the provision of any Additional Services. FSL may, subject to the Licensee paying the applicable fees and agreeing to any applicable further terms, agree to provide one or more Additional Services to the Licensee.

7 FEES

- 7.1 **Fees:** The Licensee must pay the Fees to FSL for the provision of the Software and the Services.
- 7.2 **Invoicing and payment:**
- a FSL will provide the Licensee with valid tax invoices on the dates set out in the Order, or if there are none:
 - i for Services provided on a time and materials basis, monthly in arrears; and
 - ii for the Software and all other Services, monthly in advance.
 - b The Fees exclude GST, which the Licensee must pay on taxable supplies (if any) under the Agreement.
 - c Where the parties have agreed that payment will be by credit card, FSL will charge the Fees to the Licensee's nominated credit card on the dates set out in the Order, or if there are none:
 - i for Services provided on a time and materials basis, monthly in arrears; and
 - ii for the Software and all other Services, monthly in advance.

- d Where the parties have agreed that payment will be by a means other than by credit card, the Licensee must pay the Fees:
 - i in accordance with any payment terms set out in the Order, or if there are none, by the 20th of the month following the date of invoice; and
 - ii electronically in cleared funds without any set off or deduction except to the extent required by law.
 - e If the Licensee is required by law to make any deduction, the Licensee must pay FSL any additional amount that is necessary to ensure receipt by FSL of the full amount which FSL would have received but for the deduction.
- 7.3 **Overdue amounts:** FSL may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by FSL's primary trading bank as at the due date (or if FSL's primary trading bank ceases to quote such a rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.
- 7.4 **Increases:** Without limiting clause 1, the Fees will increase automatically each Year by the greater of 3% or the percentage change in the New Zealand Consumer Price Index (or similar or equivalent index if that index ceases to be published) over the 12 months preceding the last quarterly publication of that index issued by Statistics New Zealand prior to the date of the notice, with the increase to take effect on the anniversary of the Invoicing Start Date. If the Licensee does not wish to pay the increased Fees, it must terminate the Agreement in accordance with clause 12.2b, provided the notice is received by FSL before the effective date of the Fees increase. If the Licensee does not terminate the Agreement in accordance with this clause, it is deemed to have accepted the increased Fees.

8 INTELLECTUAL PROPERTY

- 8.1 **Retained Intellectual Property:** Subject to clauses 8.2 and 8.3, the following Intellectual Property remains the property of the current owner:
- a Intellectual Property that existed prior to the Effective Date; and
 - b Intellectual Property that was developed independently of the Agreement.
- 8.2 **Software and related IP:** From the date of creation or development, FSL owns all Intellectual Property Rights in:
- a the Software and the Documentation; and
 - b any other item or material created, developed or provided by or on behalf of FSL under or in connection with the Agreement.
- 8.3 **Feedback:** If the Licensee provides FSL with ideas, comments or suggestions relating to the Software, the Documentation or the Services (together **feedback**):
- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material enhancements, modifications or derivative works), are owned solely by FSL; and
 - b FSL may use or disclose any feedback for any purpose.
- 8.4 **IP indemnity:**
- a FSL indemnifies the Licensee against any claim or proceeding brought against the Licensee to the extent that claim or proceeding alleges that the Licensee's use of the Software in accordance with the Agreement constitutes an infringement of a third party's Intellectual Property Rights (**IP Claim**). The indemnity is subject to the Licensee:
 - i promptly notifying FSL in writing of any IP Claim;
 - ii making no admission of liability and not otherwise prejudicing or settling the IP Claim, without FSL's prior written consent; and

- iii giving FSL complete authority and information required for FSL to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for FSL's account.
- b The indemnity in clause 8.4a does not apply to the extent that an IP Claim arises from or in connection with:
 - i the Licensee's breach of the Agreement;
 - ii the use of the Software in a manner or for a purpose not reasonably contemplated by the Agreement and not otherwise authorised in writing by FSL;
 - iii any third party data or data owned by the Licensee; or
 - iv modification or alteration of the Software by a person other than FSL.
- c If at any time an IP Claim is made, or in FSL's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, FSL may (at FSL's option):
 - i obtain for the Licensee the right to continue using the items that are the subject of the IP Claim; or
 - ii modify, re-perform or replace the items that are the subject of the IP Claim so they become non-infringing.

9 CONFIDENTIALITY

- 9.1 **Security:** Each party must, unless it has the prior written consent of the other party:
- a keep confidential at all times the Confidential Information of the other party;
 - b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
 - c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clause 9.1a and 9.1b.
- 9.2 **Permitted disclosure:** The obligation of confidentiality in clause 9.1a does not apply to any disclosure or use of Confidential Information:
- a for the purpose of performing the Agreement or exercising a party's rights under the Agreement;
 - b required by law (including under the rules of any stock exchange);
 - c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
 - d which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality; or
 - e by FSL if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that FSL enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 9.

10 WARRANTIES

- 10.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement which, when accepted, will constitute binding obligations on the warranting party.
- 10.2 **No other warranties:** To the maximum extent permitted by law:
- a the Software and the Services are provided on an *as is* basis without warranty of any kind, either expressed or implied, including, but not limited to, any implied warranties of merchantability and fitness for a particular purpose; and

- b without limiting clause a10.2a, FSL makes no representation or warranty concerning the quality of the Software or the Services, and does not promise that the Software will be error-free, bug-free, or will operate without interruption.

10.3 **Business use:** The Licensee agrees and represents that it is acquiring its licence to the Software and the Services, and entering the Agreement, for the purpose of a business and that no consumer protection legislation applies to the supply of the Software or the Services, or the Agreement.

11 LIABILITY

11.1 **Liability exclusion:** To the maximum extent permitted by law:

- a the Licensee accesses and uses the Software and the Services at its own risk; and
- b FSL is not liable or responsible to the Licensee or any other person for any claim, damage, loss, liability and cost under or in connection with the Agreement, the Software, the Services or the Licensee's access and use of (or inability to access or use) the Software or the Services. This exclusion applies regardless of whether FSL's liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise.

11.2 **Maximum liability:** To the maximum extent permitted by law and only to the extent clause 11.1 does not apply, the maximum aggregate liability of FSL under or in connection with the Agreement or relating to the Software or the Services, whether in contract, tort (including negligence), equity, breach of statutory duty or otherwise, will be limited (at FSL's option) to:

- a remedying, repairing or replacing the Software;
- b remedying or reperforming the Services; and/or
- c refunding the Fees paid by the Licensee under the Agreement in the 12 month period preceding the first event giving rise to liability.

11.3 **Unrecoverable loss:** Neither party is liable to the other under or in connection with the Agreement for any:

- a loss of profit, revenue, savings, business, data and/or goodwill; or
- b consequential, indirect, incidental or special damage or loss of any kind.

11.4 **Unlimited liability:**

- a Clauses 11.1 to 11.3 do not apply to limit FSL's liability:
 - i under the indemnity in clause 8.4a; or
 - ii under or in connection with the Agreement for:
 - ▲ personal injury or death;
 - ▲ fraud or wilful misconduct; or
 - ▲ a breach of clause 9.
- b Clause 11.3 does not apply to limit the Licensee's liability:
 - i to pay the Fees;
 - ii under or in connection with the Agreement for:
 - ▲ breach of clause 3 or 5; or
 - ▲ those matters stated in clause 11.4aii; or
 - iii for infringement of FSL's Intellectual Property Rights.

11.5 **No liability for other's failure:** Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the responsibility, liability or failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.

- 11.6 **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost, or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement.

12 TERM, TERMINATION AND SUSPENSION

- 12.1 **Duration:** The Agreement starts on the Effective Date and continues until terminated in accordance with its terms.

12.2 **Termination rights:**

- a Either party may, by notice to the other party, immediately terminate the Agreement if the other party:
 - i breaches any material provision of the Agreement and the breach is not:
 - ▲ remedied within 10 days of the other party notifying it of the breach; or
 - ▲ capable of being remedied;
 - ii becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
 - iii is unable to perform a material obligation under the Agreement for 15 days or more due to Force Majeure.
- b The Licensee may terminate the Agreement at any time on giving no less than 30 days' notice to FSL.
- c Without limiting any of its other rights and remedies, FSL may, by notice to the Licensee, immediately terminate the Agreement if:
 - i the remedies in clause 8.4c are exhausted without remedying or settling the IP Claim; or
 - ii the Licensee fails to install a Revision within 24 months of it being released to the Licensee by FSL.

- 12.3 **Suspension:** Without limiting any of its other rights and remedies, FSL may suspend the Licensee's licence to use the Software or otherwise restrict the Licensee's access and use of the Software if any amount payable is not paid by the due date or if in FSL's reasonable opinion the Licensee is in breach of any other term of the Agreement.

12.4 **Consequences of termination or expiry:**

- a Termination or expiry of the Agreement does not affect either party's rights and obligations accrued before that termination or expiry.
- b On termination or expiry of the Agreement, the Licensee must pay all Fees for the rights and Services provided prior to that termination or expiry. Fees paid in advance are not refundable in any circumstances, except to the extent required by law.
- c Each party must, at the other party's request following the termination or expiry of the Agreement, return to the other party or (at the other party's option) destroy all Confidential Information of the other party (including, in the case of the Licensee, the Software and Documentation) in the first party's possession or control.

- 12.5 **Obligations continuing:** Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 8, 9, 11, 12.4, 12.5 and 13, continue in force.

13 DISPUTES

- 13.1 **Good faith negotiations:** Before taking any court action, a party must use its best efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations.

- 13.2 **Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.
- 13.3 **Right to seek relief:** This clause 13 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

14 GENERAL

- 14.1 **Force majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the affected party:
- a immediately notifies the other party and provides full information about the Force Majeure;
 - b uses best efforts to overcome the Force Majeure; and
 - c continues to perform its obligations to the extent practicable.
- 14.2 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.
- 14.3 **Independent contractor:** FSL is an independent contractor of the Licensee. No other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.
- 14.4 **Notices:** FSL may provide notice to the Licensee by email. A notice given by the Licensee to FSL under the Agreement must be delivered to FSL via email to **[insert contact email address for FSL]** or such other email address notified by FSL to the Licensee for this purpose.
- 14.5 **Severability:** Any illegality, unenforceability or invalidity of a provision of the Agreement does not affect the legality, enforceability or validity of the remaining provisions of the Agreement.
- 14.6 **Variation:** Except as set out otherwise in the Agreement, any variation to the Agreement must be in writing and signed by both parties.
- 14.7 **Entire agreement:** The Agreement sets out everything agreed by the parties relating to the Software licence and the Services and supersedes and cancels anything discussed, exchanged or agreed prior to the Effective Date. The parties have not relied on any representation, warranty or agreement relating to the Software licence and the Services that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Effective Date.
- 14.8 **No assignment:**
- a The Licensee may not assign, novate, subcontract or transfer any right or obligation under the Agreement without the prior written consent of FSL, that consent not to be unreasonably withheld. The Licensee remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.
 - b Any change of control of the Licensee is deemed to be an assignment for which FSL's prior written consent is required under clause 14.8a. In this clause, **change of control** means any transfer of shares or other arrangement affecting the Licensee or any member of its group which results in a change in the effective control of the Licensee.
- 14.9 **Law:** The Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the courts of New Zealand in relation to any dispute connected with the Agreement.

SCHEDULE – SUPPORT SERVICES

1 DEFINITIONS

In addition to the defined terms set out in clause 2.1 of the Agreement, in this Schedule the following terms have the stated meaning:

Term	Meaning
Business Hours	9:00 a.m. to 5:00 p.m. on Business Days.
Error	any verifiable and reproducible failure of the Software to materially conform to the Documentation, unless such failure: <ul style="list-style-type: none"> a does not materially affect the operation and use of the Software; or b results from any of the matters set out in sections 4.6a to 4.6d of this Schedule.
Error Correction	a modification, addition or deletion to or from the Software that brings the Software into conformance with the Documentation, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the material adverse effect on the Licensee of the Error.
Level 1 Issue	the Software is down or is causing major problems to the Customers in the operation of its normal business.
Level 2 Issue	defective Software functionality leading to a significant loss of services in the Licensee's operating environment (e.g. a subset of critical functionality is down or inoperable; significant business impact).
Level 3 Issue	a function of the Software is unavailable or not working as specified in the Documentation; important issues without significant immediate operational impact; other functions are working normally.
Level 4 Issue	a function of the Software is not working as specified in the Documentation and has little or no operational impact; a request for information about the Software.
Maintenance	the maintenance services described in section 3 of this Schedule.
Support Request	a report from the Licensee of an Error or suspected Error, or a request for information relating to the Software.
Support Start Date	the start date for Support Services set out in the Order, or if there is no such date stated, the Effective Date.
Support Term	the period commencing on the Support Start Date and ending on the termination of the Agreement.
System Manager	the person appointed by the Licensee as its system manager, who is responsible for maintaining the integrity of the operating environment for the Software.

Term	Meaning
Technical Support	the technical support services described in section 4 of this Schedule.
Workaround	a temporary solution to an Error that FSL has implemented, or enabled the Licensee to implement, and that allows the Software to regain functionality and provide major software functions in accordance with the Documentation.

2 SUPPORT SERVICES

- 2.1 **Maintenance and Technical Support:** For so long as the Licensee has paid all Fees, maintained a proper operating environment for the use of the Software in accordance with any guidance from FSL, including the Documentation, and otherwise complied with the Agreement and the Documentation, FSL will provide to the Licensee for the Support Term:
- a Maintenance Support; and
 - b Technical Support, using reasonable efforts to meet the time frames described in section 5 of this Schedule.
- 2.2 **Discontinuance:** FSL may discontinue any Software or Revision, and stop supporting Software or Revisions 24 months after a subsequent Revision has been released to the Licensee by FSL.
- 2.3 **Additional Services:** If FSL performs services at the Licensee's request beyond the scope of the services set forth in this Schedule, the Licensee will be billed for such services as Additional Services at FSL's then current charges for such services.

3 MAINTENANCE

- 3.1 **FSL Software Maintenance Update:** From time to time, FSL may develop permanent fixes or solutions to known problems or bugs in the Software and incorporate them into a formal update to the Software (**Maintenance Update**). If the Licensee is under valid maintenance coverage on the general release date of a Maintenance Update, FSL will provide the Licensee with the Maintenance Update and related Documentation, both at no additional charge to the Licensee. It is the Licensee's sole responsibility to implement any Maintenance Update on its systems. In the event the Licensee requests FSL to implement the Maintenance Update for the Licensee, then this will be charged for as an Additional Service at FSL's current hourly rate.
- 3.2 **FSL Software Upgrades:** From time to time, FSL may release to its end user licensees a major revision to the Software, which adds new and different functions, or capabilities to the Software (**Upgrade**). If the Licensee is under valid maintenance coverage on the general release date of the Upgrade, FSL will provide the Licensee with the Upgrade and related Documentation, both at no additional charge to the Licensee. It is the Licensee's sole responsibility to implement any Upgrade on its systems. In the event the Licensee requests FSL to implement the Upgrade for the Licensee, then this will be charged for an Additional Service at FSL's current hourly rate.
- 3.3 **New versions:** From time to time, FSL may release to its end user licensees a major revision to the Software, which adds significant new and different functions or capabilities to the Software, or which include major architecture changes (**New Version**). New Versions may, at FSL's discretion, be subject to payment of an additional Fee. If the New Version is provided at no additional Fee, or the Licensee agrees to pay the applicable additional Fee, FSL will provide the Licensee with the New Version and related Documentation. It is the Licensee's sole responsibility to implement any New Version on its systems. In the event the Licensee requests FSL to implement the New Version for the Licensee, then this will be charged for an Additional Service at FSL's current hourly rate.

4 TECHNICAL SUPPORT

- 4.1 **Support Requests:** The Licensee's System Manager will be given contact details for FSL's support desk. Where the Licensee considers (acting reasonably) that the Software is not conforming in all material respects with the Documentation, the Licensee's System Manager will be entitled to contact the support desk during Business Hours through FSL's ticketing system, by email at helpdesk@ferretsoftware.co.nz or using the contact details provided to the System Manager, to consult with FSL technical analysts concerning problem resolution, bug reporting, documentation clarification, and general technical guidance. FSL will assist the System Manager in utilising the Software and in identifying and providing Workarounds, if possible.
- 4.2 **Error reporting:** The Licensee agrees to log a Support Request through FSL's ticketing system, by email at helpdesk@ferretsoftware.co.nz or using the contact details provided to the System Manager promptly following the discovery of any Error or suspected Error. The Licensee agrees, if requested by FSL, to submit promptly to FSL a listing of output and any other data, including the operating conditions under which the Error occurred or was discovered, that FSL may reasonably require to reproduce the Error. Such listings, data, and requested information will constitute the Licensee's confidential information.
- 4.3 **Software requests:** The Licensee may submit to FSL a request identifying potential problems in, or improvements to, the Software. Any such request should be submitted through FSL's ticketing system, by email at helpdesk@ferretsoftware.co.nz or using the contact details provided to the System Manager. FSL retains the right to determine the final disposition of all such requests, and will inform the Licensee of the disposition of each request.
- 4.4 **Licensee responsibilities:** The Licensee:
- a must maintain its computer system at the latest code revision level deemed necessary by FSL for proper operation of the Software;
 - b must maintain its computer system and associated peripheral equipment in good working order in accordance with the manufacturers' specifications, and ensure that any problems reported to FSL are not due to hardware malfunction;
 - c must supply FSL with access to and use of all information and facilities determined to be necessary by FSL to render the Technical Support described in this section 4;
 - d must perform any tests or procedures recommended by FSL for the purpose of identifying and/or resolving any problems;
 - e must maintain a procedure external to the Software for reconstruction of lost or altered files, data, or programs to the extent deemed necessary by the Licensee; and
 - f will be solely responsible at all times for the safeguarding of its proprietary, confidential and classified information.
- 4.5 **Conditions for Technical Support:** The provision of Technical Support by FSL is conditional on the Licensee:
- a first using reasonable efforts to resolve the issue by referring to the Documentation;
 - b providing FSL with all information and access reasonably required by FSL to resolve the issue; and
 - c logging a Support Request in the manner and via one of the contact methods provided to the System Manager.
- 4.6 **Exclusions from Technical Support:** Nothing in the Agreement (including in this Schedule) requires FSL to provide Technical Support where the support is required as a result of:
- a modification of the Software by any person other than FSL;
 - b the Licensee's breach of the Agreement, including use of the Software by the Licensee or its personnel in a manner or for a purpose not reasonably contemplated by the Agreement or the Documentation, and not otherwise authorised in writing by FSL;

- c a failure of the Licensee to install any Maintenance Update or Upgrade so that the Software remains current in accordance with section 4.4 of this Schedule; or
 - d any hardware or software product other than the Software (**Other Product**). If FSL provides support services for a problem caused by an Other Product, or if FSL's service efforts are increased as a result of an Other Product, FSL will charge for such extra services as an Additional Service on a time and materials basis. If, in FSL's opinion, performance of Technical Support is made more difficult or impaired because of Other Products, FSL will notify the Licensee, and the Licensee must immediately remove the Other Product at its own risk and expense during any efforts to render Technical Support under this Agreement. The Licensee will be solely responsible for the compatibility and functioning of Other Products with the Software.
- 4.7 **Additional Services:** In the event the Licensee requests FSL to perform any work or provide assistance that is not covered by this Schedule, FSL reserves the right to charge for time spent as an Additional Service at FSL's current hourly rate.

5 RESPONSE AND RESOLUTION TIMES

5.1 Issue classification:

- a Following receipt of a Support Request FSL will, acting reasonably and having regard to the information provided by the Licensee in the Support Request, determine whether the Support Request is, or appears to be, a Level 1 Issue, Level 2 Issue, Level 3 Issue or Level 4 Issue.
- b FSL may reclassify the Support Request if it determines, acting reasonably and having regard to any information obtained after receipt of the Support Request, that the Support Request has been incorrectly classified.

5.2 Response and resolution process and timeframes: FSL will use reasonable efforts to respond to and resolve Support Requests as follows:

- a For Level 1 Issues:
 - i within 4 Business Hours of the receipt of a Support Request relating to a Level 1 Issue, FSL will contact the Licensee to verify the Level 1 Issue and begin a resolution process;
 - ii upon FSL's verification of a Level 1 Issue, FSL will assign a dedicated resource to work on providing a Workaround for the Level 1 Issue on a full-time basis (during Business Hours) until a Workaround is provided; and
 - iii FSL will commence working on an Error Correction as soon as the Workaround is provided.
- b For Level 2 Issues:
 - i FSL will, within 8 Business Hours of the receipt of a Support Request relating to a Level 2 Issue, contact the Licensee to verify the Level 2 Issue;
 - ii upon FSL's verification of a Level 2 Issue, FSL will use commercially reasonable efforts to provide a Workaround for the Level 2 Issue; and
 - iii FSL will provide an Error Correction for the Level 2 Issue in the next scheduled patch release of the Software.
- c For Level 3 Issues, within 2 Business Days of the receipt of a Support Request relating to a Level 3 Issue and upon FSL's verification of a Level 3 Issue, FSL will initiate work to provide an Error Correction for the Level 3 Issue in the next regular release of the Software.
- d For Level 4 Issues, within 3 Business Days of the receipt of a Support Request relating to a Level 4 Issue and upon FSL's verification of a Level 4 Issue, FSL will initiate work to provide an Error Correction for the Level 4 Issue in the next regular release of the Software or to provide the requested information (as applicable).

- 5.3 **Conditions:** The following terms apply to response, Workaround and Error Correction time targets above:
- a Response times are measured from when FSL receives a Support Request, provided that, if a Support Request is received outside of Business Hours, the Support Request will be deemed to be received at the start of the next Business Day.
 - b Response times are targets only. FSL will use reasonable efforts to meet these targets but will have no liability to the Licensee if the targets are not met.
 - c Only hours and days within Business Hours count towards response times.
 - d The timeframes above are based on the assumption that all information is provided to address the Support Request within the priority target. If this assumption is not correct Workaround and/or resolution may be delayed.