

DYNASOFT LIMITED
Les Vagues, St Clement, Jersey, JE26PX, GB

Parties:

- (1) DYNASOFT LIMITED of Les Vagues House, St Clement, Jersey, JE26PX, GB, Company number 98021
- (2) Licensed user of Dynasoft Cybercafe SurfShop who has taken out Dynasoft's Application support service

THIS AGREEMENT is made between DYNASOFT LIMITED, a limited company organised under the laws of the States of Jersey (hereinafter the 'service provider') and a licensed customer and user of Dynasoft Cybercafe SurfShop, (hereinafter the 'Client'). DYNASOFT LIMITED and the Client shall collectively be known herein as "the Parties".

The name and address of the 'Client' are as follows:

Name: _____
 Company: _____
 Address line 1: _____
 Address line 2: _____
 Address line 3: _____
 Address line 4: _____
 Email: _____
 Web: _____
 Telephone: _____

WHEREAS, The 'service provider' desires to sell a software support service as part of its software product called Dynasoft Cybercafe SurfShop to the 'Client' under the terms and conditions set forth below;

WHEREAS, the nature of the services provided under this agreement are generally characterized as: Support services for Dynasoft's Cybercafe SurfShop software programme.

IN CONSIDERATION of the mutual promises and other valuable consideration exchanged, the Parties, intending to be legally bound, hereby agree and contract as follows:

1. Definitions

- 1.1 "Application Software" means the software made and supplied by the 'service provider' to the 'Client' and hosted by the 'Client' but accessible to the 'service provider' over the Internet. The application software provided is called Dynasoft Cybercafe SurfShop. More information about it is on the 'service provider's' website.
- 1.2 **Services:**
 - 1.2.1 "Application support" means requests for help for and clarifications about the normal usage of the 'software'; response to fix a specific bug; advice to the Client if a particular feature exists and generally, help about issues arising from the normal use of the application software.
 - 1.2.2 "Application Training" means training by the 'service provider' of one of the 'Client's' employees in respect of general and user-specific application use, advice about the best configuration of user options for his needs, advice about changing user details to fit his needs and accessing the Client's computer to perform tasks that he would otherwise be doing.
 - 1.2.3 "Application Updates" means the provision by the 'service provider' of all software updates that the 'service provider' releases for the 'application software'.
 - 1.2.4 "Application Installation and Configuration" means the installation and configuration by the 'service provider' of the initial licences of the 'software' bought by the 'Client'.
- 1.3 "System Fault" is a minor malfunction with an area of the 'application software' and/or the 'services'.
- 1.4 "Severe Fault" is a malfunction of an area of the 'application software' or the 'services'.
- 1.5 "Mission Critical Fault" is either a condition of 'application software' inaccessibility or identification of a security issue relating to the 'services' or a situation in which an area of the 'application software' becomes inaccessible.
- 1.6 "Bug" means an error, flaw, mistake, failure, or fault in the 'application software' that produces an incorrect or unexpected result, or causes it to behave in unintended ways.
- 1.7 "Dynasoft Website" means the 'service provider's' main website at "http://www.dynasoft.net".
- 1.8 "Terms and Conditions" means the service provider's normal terms and conditions available from <http://www.dynasoft.net/terms.html>, its End-User Licence Agreement available when the 'application software' is installed along with this service level agreement pursuant to the provision of the Service.

2. Agreement terms

This agreement is to take effect from the date of receipt of the Client's annual support fee by the 'service provider'. The agreement shall have a stated term of 1 year (hereinafter "Agreement Term").

2.1 Early agreement termination: The agreement may be terminated prior to the expiration of the agreement term by means of written notice by either Party to the other. Agreement termination shall take effect after the expiry of 10 days from the date of receipt of termination notice by the Party to whom it was given. All invoices that have been sent to the 'Client' are still due and need to be paid in full before these 10 days are out. Failure to settle any outstanding invoice results in suspension of the Client's licences and services by the 'service provider' until all monies have been paid in full.

2.2 Chronic failure. In all cases, the 'Client' has the power to terminate the agreement immediately where the 'service provider' chronically fails to deliver the promised 'services'. "Chronic failure" means that for two consecutive months the 'service provider' failed to deliver either (a) the minimum required service level of any of the 'services' subject to a service level metric under the agreement or (b) another substantial service required by the agreement, which is not subject to a service level metric. The service level metric under this agreement is as follows:

- Application support: Failure to respond within 72 hours to 3 consecutive and different support issues raised by the 'Client'.

3. Service Objectives

3.1 For the 'services' to be fulfilled, the 'Client' has to provide to the 'service provider' online access of the 'application software' so that the 'service provider' can utilise this to perform all support and optional training-related tasks. The 'Client' needs to provide the 'service provider' with Internet access via Virtual Private Network (VPN) to a server where the 'application server' is hosted.

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3.2 The 'Client' shall provide the 'service provider' with access to a fully hosted version of the 'application software' via a secure, fast and efficient hosting environment.

3.3 The 'service provider' is only responsible for installation and configuration of the 'application software' and its supporting proprietary software and scripts as required for the 'services' to be fulfilled at the initial stage provided the Client has contracted the service provider to provide him/her with the 'application installation and configuration' service. This installation and configuration service is only available during the initial training stage and is not provided during the normal course of the provision of this agreement's 'application support'.

4. Hosting Service Availability

4.1 The hardware, software and network are monitored and maintained by the 'Client' and shall normally be available to the 'service provider' twenty-four (24) hours a day, seven (7) days a week, in accordance with industry standards, except for scheduled maintenance and required repairs, in advance of which the 'service provider' shall be notified by email and/or phone.

4.2 The hosting environment shall have an equivalent access speed of 6 seconds or less with a 10Mbps Internet line and have a 99.0% uptime guarantee. 99.0% uptime is defined as 99.0% of the time during any calendar month when the hosting server must be available. This is required in order for the 'service provider' to carry out all support work with the minimum amount of downtime.

5. Faults

Notification of known 'system faults', 'system outage', 'severe faults' and 'mission critical faults' of the hosting server will be made available within 12 hour of their occurrence by the 'Client' to the 'service provider' via email and/or phone.

6. Statement of work

The following are the various categories of services to be provided by 'service provider' to the 'Client' under this agreement:

6.1 Application Support

6.1.1 Application support is available to the 'Client' as part of this agreement. This means the 'Client' may send the 'service provider' requests for help and clarifications about the normal usage of the 'software'. The 'service provider' then responds by phone, instant messaging or email within 24 hours of receipt of the request for support.

6.1.2 Application support also includes support for the following:

- Response to fix an issue related to the 'application software' like a specific bug or unexpected behaviour;
- Response to let the Client know if a particular feature exists in the 'application software' and indication to the Client where to look for the best place for this in the documentation provided with the 'application software' (i.e., guides, manuals, online training videos,...)
- Further examples of non-bug-related issues that are covered: error messages, repeated fails on sending, software not responding, strange screens, extreme slow sending,...

6.1.3 This support does not include performing any tasks that the 'Client' would otherwise perform himself using the 'application software'. These exclusions cover accessing the Client's hosting server and performing any installation or configuration work with the Client's own data. If support is given via VPN it is only given to point out where to look for specific things in the application software and excludes performing any installation or configuration. If the 'Client' requests that the 'application provider' perform such work, then notice will be given in writing to him/her that this work constitutes outsourced and/or training work (and so falls outside normal 'application support') and will advise him/her if additional charges might apply. If the 'Client' acknowledges this and gives his tacit agreement to it, then a separate invoice will be issued for this work.

6.1.4 This support is unlimited in terms of the number of hours given to the 'Client' and is valid for 12 month from the date of this agreement.

6.1.5 Application support is available within normal working hours (8.30am – 6.30pm, Monday to Friday, UK time) by phone, email or VPN. The 'service provider' normally charges for any help outside these times separately but will communicate in writing to the Client whenever such charges apply.

6.2 Application Updates

As part of this agreement, the 'service provider' will make all 'application software' updates available to the 'Client'. This provision excludes any installation work that the 'Client' might require on the database and applications that come bundled with the 'application software'.

6.3 Application Training

Application training is excluded from this agreement but can be taken out separately by the 'Client'.

6.4 Outsourced Billing Service

Outsourced billing is excluded from this agreement but can be taken out separately by the 'Client'.

6.5 Application Installation and Configuration

Application installation and configuration is excluded from this agreement but can be taken out separately by the 'Client'.

7. How to report a bug

It is to be noted that in order for bugs to be fixed, the 'service provider' needs as comprehensive a bug report as possible. This especially means that the 'service provider' has to know the exact steps that lead to a bug appearing: what buttons are clicked, in what order, what settings were entered, time of day, date, screenshots of the problems and exact configuration of the windows machines used,... The following should be communicated to the 'service provider': any error log files, a backup of the application software's database and copies of all files (CDRs,...) that are giving problem. The 'service provider' also needs to know exactly what piece of data is giving problems (ie, the exact CDR records, customer number and DDIs). All files should be zipped and bug reports sent to support@dynasoft.net. A quicker alternative would be to let the 'service provider' access the server via VPN and give it access to the application's database so it can see what the problem is and see what the Client's data and settings are at the exact time the error occurred. Please note that no sensitive information like customer credit cards should be sent to the 'service provider' by email or through download links.

8. Requesting support

The 'Client' is expected to test fully all billing scenarios before final invoices are sent out to customers. This especially includes testing after any change in their data that was the result of modifications the 'service provider' might have done following a request for support.

9. Costing

The cost of application support and application software updates are set out in the application provider's rate sheets which are normally communicated to the 'Client' and/or published on the Dynasoft Website.

10. Accountability

The 'service provider' guarantees that all reasonable measures within its resources shall be taken to ensure the fulfilment of the 'application support'. The 'service provider' only assumes responsibility for the 'application software' and not for bugs or faults that might be present in any other software necessary for the correct fulfilment of this responsibility. The 'service provider's' liability for damages is limited to computer bug fixes of the 'application software' and correction of staff errors.

11. Bug support

The 'application provider' gives the 'Client' bug support for the lifetime use of the 'application software' by the 'Client'.

12. Billing

The 'service provider' shall invoice the 'Client' every year in advance of the execution of the work for 'services' 6.1 and 6.2 above using the contact email address the 'service provider' has. Payment terms shall be net invoice amount due 10 days after invoice receipt by the 'Client'. No penalty for late payment of the invoice amount by the 'Client' is due but this might result in delayed delivery of the 'services'. A separate invoice will be raised by the 'service provider' for any additional work that has to be done both in terms of development work, training or generally work above and beyond the allowances set out in this agreement.

13. Notice

All notice required to be given under this agreement shall be given in writing. Written notice may be delivered either via electronic mail, instant messaging or a hard copy through the postal services or a private courier. Notice is not effective until received by the other party. Delivery of written notice via the postal services' Certified Mail shall constitute *prima facie* evidence of delivery. For each party, notices required by this agreement shall be given to the representative named below at the stated address.

Notice to Service Provider:

DYNASOFT LIMITED
Les Vagues House, St Clement, Jersey, JE26PX, GB
Email/MSN Messenger/Skype: info@dynasoft.net

It is the duty of each party to promptly notify the other of any change of address. If notice is given via electronic mail, the sending party must also send a duplicate hard copy of the notice via postal service or private courier.

14. Force Majeure

Neither Party shall be liable nor be able to terminate this agreement for any failure to perform hereunder where such failure is proximately caused by a Force Majeure Occurrence. A "Force Majeure Occurrence" shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which by exercise or reasonable diligence the said party is unable to prevent or provide against. Without limiting the generality of the foregoing, force majeure occurrences shall include: acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, acts of foreign combatants, terrorists acts, military or other usurped political power or confiscation, nationalization, government sanction or embargo, labour disputes of third parties to this agreement, or the prolonged failure of electricity or other vital utility service. Any Party asserting Force Majeure as an excuse to performance shall have the burden of proving proximate cause, that reasonable steps were taken to minimize the delay and damages caused by events when known, and that the other Party was timely notified of the likelihood or actual occurrence which is claimed as grounds for a defence under this clause.

15. Severability

In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement. All remaining provisions of this Agreement shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

16. Modification

Except as otherwise provided in this document, this Agreement may be modified, superseded, or voided only upon the written and signed agreement of the Parties.

17. Exclusive Jurisdiction for Suit in Case of Breach

The Parties, by entering into this agreement, submit to jurisdiction in the States of Jersey, GB for adjudication of any disputes and/or claims between the parties under this agreement. Furthermore, the parties hereby agree that the courts of States of Jersey, GB shall have **exclusive** jurisdiction over any disputes between the parties relative to this agreement, whether said disputes sounds in contract, tort, or other areas of the law.

17. Governing law

This Agreement shall be interpreted under, and governed by, the laws of the States of Jersey, GB.