Custom Project Maintenance, Hosting and Support Agreement

Introduction

This Maintenance, Hosting and Support Agreement is made and entered into by and between AppInst Limited (company number 07881464) trading as AppInstitute ("AppInstitute") and customer who is a purchaser of AppInstitute software or services ("Customer"). This Maintenance, Hosting and Support Agreement does not supersede or replace any terms of the proposal or sales agreement or any other document attached to any project proposal.

1. *Interpretation*

Capitalised terms used herein shall have the meaning set forth in the Agreement, unless defined differently in this Clause or elsewhere in this Agreement.

"Act of Insolvency" shall mean:
a) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Customer;
b) the making of an application for an administration order or the making of an administration order in relation to the Customer;
c) the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the Customer;
d) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Customer
e) the commencement of a voluntary winding-up in respect of the Customer;
f) the making of a petition for a winding-up order or a winding-up order in respect of the Customer;
g) the striking-off of the Customer from the Register of Companies or the making of an application for the Customer to be struck-off;
h) the Customer otherwise ceasing to exist; or
i) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Customer.

Act of Insolvency includes any analogous proceedings or events that may be taken pursuant to the legislation of another jurisdiction in relation to a tenant or guarantor incorporated or domiciled in such relevant jurisdiction.

"Agreement" shall mean the Maintenance, Hosting and Support Agreement between AppInstitute and Customer.

"Duration" shall mean the effective period of the Maintenance, Hosting and Support Agreement as further specified in clause 10.

"Error" shall mean any verifiable and reproducible failure of the System to operate in accordance with the Functional Specifications under conditions of normal use. Notwithstanding the foregoing, "Error" shall not include any such failure that is caused by: (i) the use or operation of the System with any other software or programming languages or in an environment or on hardware other than the Designated Hardware, (ii) Modifications to the System not made or approved by AppInstitute.

"Error Correction" shall mean either (i) an Update, or (ii) a Single Error Correction.

"Fatal Errors" shall mean Errors totally blocking the functionality of the System, as a result of which the System substantially unusable.

"Holidays" shall mean every official and/or national holiday in the country where AppInstitute is located.

"Hosting" store (a website or other data) on a server or other computer so that it can be accessed over the Internet.

"System" shall mean the components on which AppInstitute offers the Maintenance Services.

"Maintenance Services" shall mean the services specified in clause 4.

"Hosting Services" shall mean the services specified in clause 5.

"Maintenance and Support Fees" shall mean the fees due by Customer to AppInstitute in consideration of the Maintenance Services.

"Major Errors" shall mean Errors, which materially disable or materially and adversely affect part of the functionality of the System.

"Minor Errors" shall mean any Errors other than Fatal Errors and Major Errors.

"Modifications" shall mean any and all changes, including without limitation additions to or deletions from the System, modifications, reconfigurations, alterations, improvements, translations, transformations, derivative works, and/or enhancements of the System.

"Services" shall mean the Maintenance Services and the Support Services.

"Specifications" shall mean the specifications of the System as described in the proposal.

"Starting Date" shall mean the date of both parties having signed this Maintenance, Hosting and Support Agreement.

"Support Request" shall mean a request for Support.

"Update" shall mean an improved version of the System or any part thereof, having the same Specifications – and not incremental additional capabilities or functionality – as the immediately preceding version of the System.

"Upgrade" shall mean a version of the System or any part thereof having incremental additional capabilities or functionality as compared to the immediately preceding version of the System.

"Working Day" shall mean each day of the week, except for Saturdays and Sundays and Holidays as described in Schedule 2.

"Working Hours" shall mean the hours within each Working Day as described in Schedule 2.

2. *Scope*

2.1. Provision of Services

Subject to Customer's payment of the Maintenance, Hosting and Support Fee, AppInstitute shall use reasonable commercial efforts to provide the Customer, during the Duration with the Maintenance Services as regards the System, in accordance with the terms and conditions of this Agreement, it being understood that AppInstitute shall only provide its services hereunder in respect of the current product release.

2.2. Exclusions

AppInstitute will not be required to provide any Support Services to the Customer under this Agreement in circumstances in which the System has been modified or altered or are used otherwise than specified by AppInstitute in the Specifications, for any hardware or software not supplied by AppInstitute (or any failures or delays related thereto), nor for Errors resulting from any breach of this Agreement. No hardware related items are handled by AppInstitute, unless as explicitly otherwise agreed in writing between the parties. This Agreement shall in no way be construed or interpreted as an obligation for AppInstitute to provide any Upgrades.

3. *Support Services*

3.1. Support

During Working Hours, AppInstitute shall make available support via telephone and email. This point of contact shall offer the Customer a point of entry for request with respect to: (i) Errors in the System; (ii) registration, identification and verification of such Errors; (iii) provision of assistance in remedying such Errors; and/or (iv) clarification of documentation and Information Requests.

3.2. Placing Calls

All Support and Information Requests must be placed by telephone or e-mail in Schedule 2.

3.3. Requests for clarification of documentation and Information Requests

AppInstitute shall use commercially reasonable efforts to address all requests for clarification of documentation and Information Requests on a basis mutually agreed by the parties.

3.4. Support Requests not related to Errors in the System

AppInstitute shall forthwith inform Customer if the Error, for which Support Request was placed, does not relate to the System.

3.5. Support Requests related to Errors in the System

If the Error, for which the Support Request was placed does– (in the sole discretion of AppInstitute) to the System, AppInstitute shall: (i) classify such Error as Fatal Error, Major Error, or Minor Error and (ii) provide Customer with subsequent follow up in accordance with the service levels details in Schedule 3.

3.6. Communications to Customer

These communications may be provided by telephone, e-mail, or any other means reasonably deemed appropriate.

4. _Maintenance Services_

For the Duration, AppInstitute shall use commercially reasonable efforts to provide Customer with Updates and Error Corrections for such Errors as have been reported and allocate sufficient, adequately trained staff in connection therewith. Such Updates and Error Corrections may be provided by email, verbal instructions or any other means mutually agreed upon. Any verbal instructions will be subsequently confirmed in writing. All Updates and Error Corrections provided to Customer shall be subject to the terms and conditions of this Agreement, unless and to the extent explicitly specified otherwise in writing by AppInstitute.

5. _Hosting Services_

5.1. Hardware

The servers used for the Hosting Services are located on the the Google Compute Engine Cloud Platform. For the avoidance of doubt AppInstitute shall have no liability whatsoever in respect of any the availability or failure of such servers or changes in functionality.

5.2. Uptime

The Hosting Service will be available 99.9% of the time in any given monthly billing period, excluding Scheduled Maintenance and any downtime of third party providers.

5.3. Data backup & storage media handling

The Hosting Service is backed up incrementally each day, with a full back up being performed weekly.

6. *Monitoring Protocols*

24x7x365 Monitoring and proactive notifications to the AppInstitute Network and Development team

- TCP Port Scanning
- Ping
- HTTP GET

5.4 SSL

128-bit SSL encryption

7. *Further Obligations of Customer*

7.1. Self Examination

Prior to placing any request reporting an Error, the Customer shall examine whether such Error is reproducible, whether such Error relates to any System components and, if so, whether such Error may be (partially) related to any third party owned software components within the System.

7.2. Providing Supporting Information

All requests reporting an Error must be accompanied by adequate supporting information, to AppInstitutes reasonable satisfaction. As a minimum this information shall comprise: (i) a detailed description of the Error; (ii) the circumstances under which the Error occurred; and (iii) sufficient additional information in order to enable AppInstitute to reproduce, classify and correct the Error.

7.3. Installation

The installation of any Error Corrections provided by AppInstitute pursuant to this agreement shall be undertaken at the sole discretion of the Customer. If any Error Corrections are required which are not covered by this Agreement, such Error Corrections will be chargeable to the Customer at a fee to be agreed with AppInstitute.

8. *Intellectual Property Rights*

Any and all intellectual property rights in the Updates and Error Corrections shall vest in and remain with the Customer.

9. *Maintenance, Hosting and Support Fees*

9.1. Subject to adjustment under clause 9.3, in consideration of the Support and Maintenance Services provided under this Agreement, the Customer shall pay to AppInstitute an annual maintenance, hosting and support fee ("MHS Fee") in an amount equal to 15% of the total accumulated project costs. The MHS Fee is payable in 12 equal monthly instalments.

9.2. The Customer has the right to self-host, in such instances the MHS Fee shall be an amount equal to 10% of the total accumulated project costs (subject to adjustment under clause 9.3). AppInstitute will not be responsible for any hosting, services, availability, hardware performance or data management/ security in such cases.

9.3. AppInstitute reserves the right to alter the MHS Fee on annual renewal or on the release of future versions of the System.

9.4. A monthly recurring invoice in respect of the MHS Fee will be issued at the start of the Agreement. Such invoices are payable on receipt. If the invoice has not been settled after thirty days then AppInstitute will consider the account to be in default and liable for termination in accordance with clause 11.

9.5. Clients with accounts in default agree to pay AppInstitute's reasonable expenses, including legal fees and costs for collection by third-party agencies, incurred by AppInstitute in enforcing this Agreement.

9.6. Any single Support Request carrying a cost that exceeds the amount paid per month by the Customer in respect of its MHS Fee shall not be covered under this Agreement and AppInstitute reserves the right to charge the Customer for any work undertaken in respect of such Support Request at AppInstitute's standard rate (regardless of whether such work is undertaken during any warranty period provided by AppInstitute).

10. *Duration and Termination*

10.1.   Duration

This Agreement is effective from the date the App goes live ("The Effective Date"). The Agreement shall continue for a period of twelve (12) months from the Effective Date ("Initial Term"). Following expiration of the Initial Term, the Agreement shall continue of a periodical basis, renewing monthly until terminated in accordance with the termination provisions contained within this Agreement.

10.2.   Termination by AppInstitute

    10.2.1.   Without prejudice to any rights or remedies of AppInstitute, AppInstitute may terminate the Agreement by giving a thirty (30) days' notice in writing to the Customer at any time.

    10.2.2.   Without prejudice to any rights or remedies of AppInstitute, AppInstitute may terminate this Agreement with immediate effect this Agreement, without any liability whatsoever, in the event that:

        10.2.2.1.   The Customer fails to make any applicable payment under this Agreement to AppInstitute when due; or

        10.2.2.2.   The Customer breaches any of the provisions of this Agreement or fails to perform any of its obligations under this Agreement; or

        10.2.2.3.   The Customer suffers an Act of Insolvency.

    10.2.3.   Any attempt by the Customer to contact AppInstitute employees or contractors in an effort to procure their services directly will mean instant termination of this Agreement with Hosting Services instantly retracted with no refund on monies already paid. The client will also be chargeable for for the full term of the Agreement.

10.3.   Termination by Customer

    10.3.1.   Without prejudice to any rights or remedies of Customer, the Customer may terminate the Agreement during the Initial Term by providing 90 days' written notice (including by email) to AppInstitute at any time, in such circumstances, the Customer will be required to pay the MSH Fee for the Initial Term in full.

    10.3.2.   Without prejudice to any rights or remedies of Customer, the Customer may terminate the Agreement after the expiration of the Initial Term by providing 30 days' written notice (including by email) to AppInstitute.

    10.3.3.   Without prejudice to any rights or remedies of Customer, the Customer may terminate this Agreement with immediate effect in writing (including email) to AppInstitute, without any liability whatsoever in the event that:

10.3.3.1.   AppInstitute breaches any of the provisions of this Agreement or fails to perform any of its obligations under this Agreement; or

10.3.3.2.   AppInstitute suffers an Act of Insolvency.

10.4.   Telephone requests for termination of services will not be honoured until and unless confirmed in writing or email.

11. Privacy

11.1.   The parties hereby acknowledge that while providing the Maintenance, Hosting and Support Services, AppInstitute has access to certain server computers of Customer on which "Personal Data" is stored. Personal Data means any information in any form relating to an identified or identifiable individual. AppInstitute will process such Personal Data only to the extent necessary to fulfil its obligations under this Agreement. The Customer hereby represents and warrants that in accordance with all the applicable laws and regulations, it has the right and authority to allow AppInstitute to process such Personal Data as described in this Agreement.

11.2.   The above authorisation serves as a consent granted by the Customer to AppInstitute to have access to the IT system of the Customer. The Customer shall inform AppInstitute immediately in the event that the Customer becomes unauthorised to grant such consent, in which case AppInstitute and the Customer will engage in good faith discussions to define how AppInstitute can continue to provide theMaintenance and Support Services.

12. Governing Law

12.1.   This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

Schedule 1

Project Name:
{project name here}

Maintenance and Support Monthly Fee:
{monthly fee here}

Payment Start Date:
{start date here}

Recurrence:
{fee recurrence, i.e. Monthly here}

Schedule 2

AppInstitute contact details:

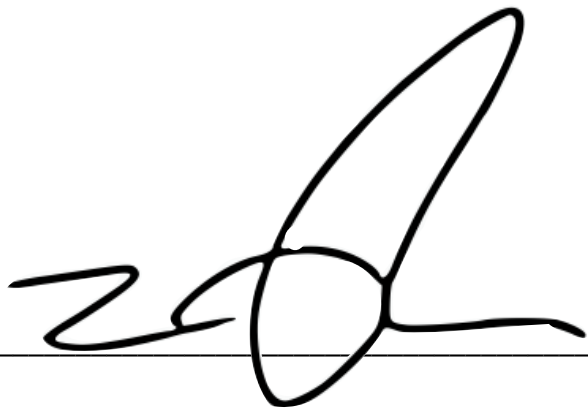Email address: support-custom@appinstitute.com

Telephone number: +44 (0)800 160 1602

Working Days: Monday – Friday

Working Hours: 9am – 5pm (GMT)

Schedule 3

Error Classification	Target Response & Repair Times
Fatal Error. Progress will be reported on a daily basis until the Error Correction is provided.	AppInstitute will respond to the support request within two (2) hours during opening hours. To take measures needed to provide an acceptable solution (work-around or Error Correction) as soon as reasonably possible. Any task that takes longer than 2 hours to resolve will be charged at the AppInstitute standard hourly/day rate.
Major Error: Progress will be reported on a weekly basis until the Error Correction is provided	AppInstitute will respond to the support request within four (4) hours during helpdesk opening hours. To reasonably provide an acceptable solution (workaround or Error Correction) within eight (8) Working Days after analysis. Any task that takes longer than 2 hours to resolve will be charged at the AppInstitute standard hourly/day rate.
Minor Error: Progress will be reported on a monthly basis and an Error Correction will be provided at AppInstitutes discretion	AppInstitute will respond to the support request within two (2) working days. To provide Error Correction in next release.

Signature: _____

Name: Ian Naylor

Duly authorised for and on behalf of AppInst Ltd

Signature: _____

Name: _____

Duly authorised for and on behalf of the customer