



Backbase Support Terms & Conditions

Version 1.0 2007

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BACKBASE USA Inc. or BACKBASE Europe BV and their subsidiaries ("Backbase") will provide Technical Support Services in accordance with the following terms and conditions ("Terms and Conditions").

1. Definitions

The following definitions shall apply:

1.1 "Authorized Contact(s)" means the individual(s) identified by Customer as having authority to receive Technical Support Services on behalf of Customer.

1.2 "Backbase Technical Support Services" or "Services" means the services provided by Backbase under these Terms and Conditions in support of Customer's use of the Supported Product(s), including but not limited to providing access to online support information and resources, distributing and licensing software, and providing interactive telephone and email technical support.

1.3 "Confidential Information" means any information disclosed by Backbase relating to Backbase Technical Support Services, including but not limited to information learned by Customer from Backbase employees or agents that relates to Backbase's products, designs, product support, business plans, business opportunities, research, development, know-how, personnel, or third-party confidential information disclosed by Backbase to Customer; provided, however, that "Confidential Information" will not include information that: (i) is now or subsequently becomes generally available to the public through no fault or breach on the part of Customer; (ii) Customer can demonstrate to have had rightfully in its possession prior to disclosure by Backbase; (iii) is independently developed by Customer without the use of any Confidential Information of Backbase; or (iv) the Customer rightfully obtains from a third party who has the right to transfer or disclose it.

1.4 "Customer" means the entity ordering Backbase Technical Support Services and represented by the Authorized Contact(s).

1.5 "Response Times" shall mean the time between the Customer contacting Backbase to request interactive technical support and the time

Backbase responds to such request. Response Times are measured in Backbase business hours.

1.6 "Support Plan" means a support offering made available by Backbase that provides specific Backbase Technical Support Services to Customer's Authorized Contacts.

1.7 "Support Incident" shall mean a specific, discrete problem that can be answered by isolating its origin to a single cause. Backbase in its sole discretion will determine what constitutes a Support Incident. A Support Incident has reached resolution when Customer receives the following: (a) information that resolves the problem; (b) information on how to obtain a software solution that will resolve the problem; (c) notice that the problem is caused by a known, unresolved issue or an incompatibility issue with software programs; (d) information that identifies the problem as being resolved by upgrading to a newer release of software; or (e) notice that the problem has been identified as a hardware equipment issue.

1.8 "Supported Product" or "Product" shall mean the Backbase branded product or such other product as may be identified by Backbase for which Backbase Technical Support Services shall be provided under these Terms and Conditions in support of Customer's use.

1.9 "Versions" and "Release":

- "Minor Version" means a set of the Software in which detected shortcomings are being remedied, i.e. 3.1.1 > 3.1.2.
- "Major Version" means a set of the Software in which in addition to possible corrections of detected shortcomings, small functional enhancements have been included, i.e. 3.1 > 3.2.
- "Release" means a set of the Software in which substantial new –but successor-functionalities or other substantial changes are introduced, i.e. 3.0 > 4.0.

2. Services

2.1 Support Plan. Backbase will provide Services as agreed in the Support Order Form (SOF) in accordance with the services as defined in the "Backbase Support Plan" version 1.0 2007. Additional support services can be ordered separately by Customer.

2.2 License. Backbase Technical Support Services shall be delivered exclusively to the Authorized Contact(s) identified by Customer. Backbase grants to Customer a nonexclusive, nontransferable, limited license to use the Backbase Technical Support Services exclusively for the purpose of assisting the Authorized Contact(s) in its computing environment.

2.3 Additional Terms

a. Software. In the event that software is made available as part of the Backbase Technical Support Services, such software shall be the copyrighted work of Backbase and/or its suppliers. Customer may install, reproduce, and use the software exclusively for the purpose of supporting the Authorized Contacts, but, except as may be permitted by applicable law, may not decompile, reverse engineer, modify, rent, lease, loan, or create derivative works in the software. BACKBASE AND ITS SUPPLIERS HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE SOFTWARE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. If the software is subject to the terms of a separate license agreement, the terms of the separate license agreement shall govern the software's terms of use.

b. Online Services. In the event that online support resources are made available to Customer as part of the Backbase Technical Support Services, access to and use of such resources will be subject to the creation of an online account for each Authorized Contact and additional terms and conditions ("Online Terms and Conditions"). Online Terms and Conditions shall include those governing access to and use of Backbase's Knowledge Base support resources, Technical Training and public discussion boards as posted at <http://www.backbase.com/devnet>.

c. Request for On-site Services. If a problem is not reproducible by Backbase, Customer might request Backbase to send a qualified technical representative to Customer's location to observe the problem and collect sufficient information so that Backbase can correct the Problem. Customer will reimburse Backbase on a time and material basis for on-site support services. Reasonable and

customary travel, lodging and meal expenses will also be reimbursed..

d. On-site Services. In the event that on-site support resources are made available to Customer as part of the Backbase Technical Support Services, the scheduling of such resources will occur at least fourteen (14) days in advance of delivery. A Customer representative must be present when Backbase delivers on-site support resources. In the event that Customer's representative fails to attend an on-site support Service, an additional fee may be charged if the Service has to be rescheduled. Customer shall provide free and safe access to the location where on-site support takes place, to enable Backbase to fulfill its obligations.

e. Additional Services. In the event that additional services outside the scope of the Support Plan are provided to Customer, such services may be subject to additional terms and conditions.

2.4 Limitations

a. Supported Versions and Releases. The Software Products will be supported according to the following schedule: (a) a Release will be supported for a period of twelve (12) months after the commercial release of the next Release, but no longer than 2 years and provided always that Licensee makes use of the last Major Version and Minor Version of the first mentioned Release; (b) a Major Version will be supported for a period of six (6) months after the commercial release of the next Major Version, provided always that Licensee makes use of the last Minor Version of the related Major Version; and (c) an Minor Version will be supported for a period of one (1) month after the commercial release of the next Minor Version. Non-current software as per the terms above will not be supported. Customer will install remedial patches and new version as required by Backbase in order to keep Supported Products eligible for Service.

b. Response Times. Backbase will use reasonable efforts to respond to a request for interactive technical support within the Response Times stated in the applicable Support Plan during the hours of operation described in the Support Plan. However, Backbase shall not be liable for its failure to respond within the stated Response Time, nor will it be in breach of these Terms and Conditions solely by reason of such failure.

c. Proper Use of Supported Products. Backbase's obligation to provide Backbase Technical Support Services is contingent upon the Customer's proper use and application of the Supported Products. Additionally, Backbase shall be under no obligation to provide Services where an issue has arisen due to: (a) modification or use of a Supported Product in a manner not intended or approved by Backbase or the product's manufacturer; (b) the failure of Customer to upgrade the Supported Product to a more current release; (c) the use of a product that is in prerelease or beta form; (d) the use of third-party software or hardware not covered within the scope of the applicable Support Plan, or (e) incompatibility of the system running the covered Supported Product.

d. Change in Services. Backbase may change or discontinue the scope of Backbase Technical Support Services under a particular Support Plan at any time without notice. However, in the event that a change or discontinuation of Services is material to Customer under the Support Plan, Customer shall be entitled to cancel the Support Plan in accordance with the Term and Termination section and be paid a prorated refund of the unexpired portion of the Support Plan's term.

2.5 Obtaining Services. Upon acceptance of Customer's order, Backbase shall provide to Customer detailed instructions on obtaining the various Services under the ordered Support Plan. Customer is responsible for all fees in establishing and maintaining email, telephone, Internet or other communication devices in the delivery of Services to Customer.

3. Customer Responsibilities

Customer agrees to cooperate with and follow instructions provided by Backbase, including but not limited to providing all documentation and assistance necessary to demonstrate and allow Backbase to diagnose an issue. Customer shall be solely responsible for any and all restoration and reconstruction of lost or altered files, data, or programs. Customer will maintain and implement a complete data backup and disaster recovery plan. Customer shall be solely responsible for any and all security of its confidential, proprietary and/or classified information. Customer shall acquire and maintain any email or communication systems if such systems are required by Backbase to render the Services. Customer will ensure that

all Authorized Contact(s) have a reasonable understanding of the Supported Products for which they seek Service and the system that it is operating on, and shall be fully aware of Customer's obligations regarding Confidential Information.

4. Orders, Prices, Payment Terms

4.1 Order. To purchase Services, Customer must submit a Support Order Form to Backbase identifying the required Support Plan, (and if applicable optional services), Activation Date, Authorized Contacts. All orders are subject to acceptance by Backbase.

4.2 Prices. Pricing for Services shall be effective on the date Backbase accepts Customer's order. Backbase may change pricing for Services at anytime, without notice. Pricing is exclusive of, and Customer will pay, all applicable sales, use, consumption, goods and service, value added or like taxes.

Backbase may change the Support Services Fees; provided that (a) Support Services Fees may only be increased once in any 12-month period and (b) no such increase shall exceed the lesser of (i) 4% or (ii) the percentage increase for the previous 12 months for the Consumer Price Index (that is for North America, the US Urban Consumers index (1991 = 100), U.S. Department of Labour (or any successor index) and for the Rest of World the Dutch Consumer Price Index.

4.3 Payments Terms. Unless Customer is purchasing Backbase Technical Support Services directly from Backbase and has credit terms, in which case payment shall be due and payable within thirty (30) days of Backbase's invoice date, all payments are due and payable prior to the delivery of Services. Backbase may impose an additional fee of 1.5% per month or such lower amount if not permitted by law, on all outstanding amounts not paid when due.

5. Warranty

Services delivered under these Terms and Conditions shall be performed in a workmanlike manner. All information provided by Backbase as part of the Services is supplied "AS IS" without warranty of any kind as to its accuracy or completeness. THE WARRANTIES CONTAINED IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE.

EXCEPT AS PROVIDED HEREIN, BACKBASE EXCLUDES ALL WARRANTIES, ORAL OR WRITTEN, STATUTORY, EXPRESS OR IMPLIED, AS PERMITTED BY APPLICABLE LAW INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES AS TO QUALITY, CARE, SKILL, AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES PROVIDED UNDER THESE TERMS.

6. Confidentiality

As permitted by law, Customer will not disclose, publish, or disseminate Confidential Information to any person other than the Authorized Contact(s), and Customer agrees to take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of Confidential Information. Customer agrees to accept Confidential Information for the sole purpose of assisting the Authorized Contacts in its computing environment. Customer agrees not to use Confidential Information otherwise for its own or any third party's benefit without the prior written approval of an authorized representative of Backbase in each instance.

7. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, BACKBASE IS NOT RESPONSIBLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS (INCLUDING LOSS OF PROFITS ON CONTRACTS); LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; LOSS OF GOODWILL; LOSS OF REPUTATION; LOSS OF, DAMAGE TO, OR CORRUPTION OF DATA; OR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED INCLUDING ANY COSTS OF RECOVERING, PROGRAMMING, OR RESTORING ANY PROGRAM OR DATA STORED OR USED WITH SUPPORTED PRODUCTS AND ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA STORED ON SUPPORTED PRODUCTS. THE FOREGOING LIMITATION SHALL NOT APPLY TO DEATH OR PERSONAL INJURY CLAIMS. BACKBASE SPECIFICALLY DOES NOT REPRESENT THAT IT WILL BE ABLE TO RESOLVE ANY SUPPORT ISSUES UNDER THESE TERMS WITHOUT RISK TO OR LOSS OF THE PROGRAMS OR DATA. BACKBASE'S LIABILITY FOR ANY AND ALL DAMAGE SHALL IN

NO EVENT EXCEED THE PAYMENTS RECEIVED BY BACKBASE FOR SERVICES PROVIDED PURSUANT TO THESE TERMS. THE REMEDIES SET FORTH HEREIN SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH BY BACKBASE UNDER THESE TERMS AND CONDITIONS.

8. Term and Termination

8.1 Term. Support services will start at Effective Date and remain in force until a period of 1 year. The support services will automatically renew for 1 year for all available offerings at the end of the first Term and any subsequent Terms unless Customer has provided Backbase with a written termination notice of its intention not to renew the Subscriptions at least thirty (30) days prior to the expiration of the then current Support Term. No termination on the basis of this provision will entitle Customer to a refund of any portion of the Support fees paid to Backbase. For Backbase Technical Support Services that are limited to a single or defined number of Support Incidents, Backbase Technical Support Services for each Support Incident shall terminate upon resolution of the issue or ten (10) business days from the Activation Date or date on which the Service was requested, whichever is earlier.

8.2 Termination. Backbase may terminate a Support Plan or additional Services immediately in the event Customer breaches these Terms and Conditions. Backbase may modify the terms, conditions, and policies of the Backbase Technical Support Service at any time without notice. Customer may terminate Backbase Technical Support Services for any reason upon thirty (30) days' written notice to Backbase. Upon termination of Backbase Technical Support Services for any reason, Customer shall immediately return to Backbase, or destroy, all materials, data, documentation, and software provided under the Backbase Technical Support Service and remove and destroy or return to Backbase any software that may have been copied to Customer's systems. All unused Support Incidents shall expire at termination.

8.3 Survival of Terms. The terms and limitations, exclusions and warranties contained herein that by their sense and context are intended to survive the termination of these Terms and Conditions, shall so survive, including without limitation the confidentiality and payment terms provisions.

9. General

9.1 Force Majeure. Backbase will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control. Customer is aware that the Supported Products are connected with or wholly or partially based on an portfolio of third party technology products, industry standards and/or official standards such as HTML, XHTML, Javascript, CSS/Cascading Style Sheets, XML, XSLT, XPath and e.g. internet related aspects as bandwidth, firewalls, cpu/computer processor units etc. which is ever changing or may even be succeeded by yet unknown new products or techniques. Therefore performance interruptions due to such cause(s) are excluded from any liability of Backbase to Customer or any of its affiliates and form a force majeure. Nevertheless Backbase Support Plans are focused to support Customer, where possible, to overcome interruptions as mentioned.

9.2 Waiver; Severability. The waiver of any breach or default under these Terms and Conditions shall not constitute a waiver of any subsequent breach or default. If a court of competent jurisdiction holds that any provision of these Terms and Conditions is invalid or unenforceable, the remaining portions will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of the Terms and Conditions.

9.3 Country Restrictions. Some Support Plans and Backbase Technical Support Services may not be available in all countries. Unless otherwise indicated by Backbase, all Backbase Technical Support Services shall be provided in English.

9.4 Recording Calls. In delivering Backbase Technical Support Services Backbase may record part or all of the calls between Customer and Backbase for quality assurance and reference purposes.

9.5 Assignment; Right to Subcontract. Backbase may subcontract Backbase's obligations to provide Backbase Technical Support Services or parts thereof to another party. The provision of Backbase Technical Support Services is not assignable by Customer without the prior written

consent of Backbase, and any attempted assignment without such consent shall be void.

9.6 Use Restrictions. Backbase Technical Support Service is for business and educational use only. Backbase Technical Support Service is not intended for use in the operation of nuclear facilities, aircraft navigation, communication systems, or air traffic control machines in which case the failure of the Backbase Technical Support Services to attain a desired result could lead to death, personal injury, or severe physical or environmental damage.

9.7 U.S. Government Use. Any software that is made available to the United States Government under these Terms and Conditions is classified as "restricted computer software" as defined in clause 52.227-19 of the FAR. The United States Government's rights to the software are as provided in clause 52.227-19 of the FAR.

9.8 Notices. Notices required by Backbase Technical Support Services shall be sent by registered or certified mail, or commercial courier service, to Backbase, at the address information mentioned on the cover of this agreement or to the official Backbase USA Inc or Backbase Europe BV main-offices as listed at www.backbase.com (Backbase website) or shall be sent by registered or certified mail, or commercial courier service to Customer at the address set forth in Backbase's invoice. Such notice shall be deemed given: three (3) business days after the date of mailing if sent by certified or registered mail; or one (1) business day after the date of deposit with a commercial courier service offering next business day service with confirmation of delivery.

9.9 Additional Legal Rights. These Terms and Conditions afford Customer specific legal rights. Customer may have additional legal rights that vary from jurisdiction to jurisdiction.

9.10 Governing Law. This agreement will be governed by and interpreted in accordance with (a) if you are a North or South American legal entity, the laws of the State of California, without giving effect to principles of conflict of laws, and you hereby consent to the exclusive jurisdiction and venue of the state courts sitting in San Francisco County, California or the federal courts in the Northern District of California to resolve any disputes arising under this agreement, (b) if you are a legal entity anywhere else in the world, the

laws of the Netherlands, any dispute arising out of, or in connection with, this Agreement that is not amicably resolved between the parties will be submitted to the District Court of Amsterdam. In each case this agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

9.11 Agreement in English. The parties hereto confirm that they have requested that this Agreement and all related documents be drafted in English.

9.12 Standard terms. No terms or conditions of any purchase order, acknowledgement or other business form that Licensee may use in connection with the acquisition of the support services will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Backbase to object to such terms, provisions or conditions.

9.13 Order of Precedence. If any inconsistencies or conflicts arise between these Terms and Conditions, Online Terms and Conditions, and any Support Plan, the following order of precedence shall apply in order of priority a. Terms and Conditions; b. Support Plans; c. Online.

9.14 Complete Agreement. These Terms and Conditions including any additional terms referenced herein constitute the entire agreement between Backbase and Customer with regard to Backbase Technical Support Services and supersedes all prior negotiations, agreements, and understandings with respect to the subject matter hereof, and no addition to or deletion from or modification of any of the provisions hereto shall be binding upon Backbase unless made in writing and signed by an authorized representative of Backbase. Any term or condition on any order or other document submitted by Customer shall be of no force or effect whatsoever, and is specifically rejected.

10. Fair Use Policy

Backbase Technical Support Services makes use of a Fair Use Policy (FUP). This means there is no limit on the frequency of which Customer can make use of Backbase Technical Support Services. This also means that Backbase has the right to take appropriate action in case usage significantly exceeds the average. Backbase has the right to

determine what usage frequency exceeds the FUP, and what classifies as an extreme case of exceeding the FUP. Backbase has the right to do so without an explicit definition of unacceptable usage. If Backbase feels that Customer exceeds the limits of this FUP, Backbase will notify Customer by writing. In extreme cases, Backbase has the right to block Backbase Technical Support Services to Customer without warning.