



*interactive data visualization, analysis and publication*

## Software Support Agreement

### Background:

Visokio Ltd. has agreed to provide to the Licensee Software Support for the Licensed Programs in return for the payment to Visokio Ltd. by the Licensee of the Software Support Fee upon the terms and conditions of this Agreement.

### Operative Provisions:

#### 1 Definitions

1.1 In this agreement:

*Designated Equipment*

Any computer running Microsoft Windows 2000 or XP with minimum 256 MB memory and a processor 1 GHz or higher.

*Licensed Programs*

the software programs designed and written by Visokio Ltd. and provided in binary code form identified by title and build number in the Schedule including any New Release of the same made or issued pursuant to clause 4

*Licensed Program Materials*

the Licensed Programs and the Program Documentation

*Term*

twelve months from the date of this agreement and each subsequent period of twelve months thereafter unless terminated in accordance with clause 6

*New Release*

any improved modified or corrected version of any of the Licensed Programs or Program Documentation from time to time issued by Visokio Ltd. pursuant to clause 4 below

*Program Documentation*

the instruction manuals user guides and other information to be made available by Visokio Ltd. at its discretion in either printed or machine readable form to the Licensee

*Program Specification*

the technical specifications from time to time published by Visokio Ltd. in respect of the Licensed Programs

*Site*

the address for delivery of the Licensed Program Materials specified by the Licensee and set out in the Schedule

*Software Support*

the provision of technical support in accordance with clause 4 below

*Software Support Fee*

the annual fee for the Software Support set out in clause 3 below



## 2 Provision of Software Support

Visokio Ltd. in consideration of the payment by the Licensee from time to time of the Software Support Fee in accordance with clause 3 below undertakes to provide Software Support during the Term upon the terms and conditions of this Agreement

## 3 Software Support Fee

3.1 The Software Support Fee (together with Value Added Tax thereon at the current rate, if any) shall be levied by Visokio Ltd. in advance of the provision of Software Support and shall be payable annually by the Licensee within 30 days of the receipt of Visokio Ltd's invoice. The software support fee is included in the Annual License Fee but is billed separately to those electing the Perpetual Licensing option.

3.2 Visokio Ltd. reserves the right to charge the Licensee the costs of all media, tapes, courier charges or any other expenses it may incur in providing Software Support. The Licensee shall pay for such costs within 30 days of receipt of an invoice from Visokio Ltd.

3.3 Visokio Ltd. reserves the right to charge the Licensee interest in respect of the late payment of any sum due under this Agreement at the rate of 4 per cent per annum above the base rate from time to time of Barclays Bank PLC from the due date therefore until payment

## 4 Software Support

4.1 With effect from the date of this agreement and for the duration of this agreement Visokio Ltd. shall provide in respect of the Licensed Programs Software Support within the response time as specified in clause 4.4 below

4.2 Software Support shall comprise all or any of the following:

4.2.1 advice by telephone or post on the use of the Licensed Programs provided that telephone support will be limited to areas not explicitly covered in the Program Documentation;

4.2.2 information and advice by telephone or post on forthcoming New Releases of the Licensed Programs;

4.2.3 upon request by the Licensee the diagnosis of faults in the Licensed Programs and the rectification of such faults (remotely or by attendance on Site at Visokio Ltd. sole discretion) by the issue of fixes in respect of the Licensed Programs and the making of all necessary consequential amendments (if any) to the Program Documentation;

4.2.4 the creation and dispatch to the Licensee from time to time at Visokio Ltd's sole discretion of fixes in respect of the Licensed Programs;

4.2.5 the creation and dispatch to the Licensee from time to time at Visokio Ltd's sole discretion of a New Release of the Licensed Programs and Program Documentation;

4.2.6 Software Support does not apply to the action or operation of any software or hardware supplied by any other supplier other than the Licensed Programs.

4.3 The Licensee shall inform Visokio Ltd. of all faults requiring Software Support as soon as they arise using the reporting tools supplied with the application. If so requested by Visokio Ltd., the Licensee agrees to supply in writing to Visokio Ltd. a detailed description of any fault requiring Software Support and the circumstances (and data files) in which it arose. The Licensee shall in the first instance contact the Distributor (if any) of the Licensed Program Materials who may refer all faults reported to Visokio Ltd.

4.4 The response time for Software Support shall be between the hours of 9 a.m. and 5.30 pm GMT. Monday through to Friday (excluding bank and other public holidays). Visokio Ltd. shall respond to the Licensee with a status report on the fault following notification. On a best efforts basis, Visokio Ltd. will classify the fault as Critical or Non-Critical to the fundamental operation of the Licensed Programs within 1 business day and the following procedures will then apply:

4.4.1 Critical Problems: On a best efforts basis, Visokio Ltd. will attempt to generate a fix or workaround by correcting or modifying the Licensed Programs to achieve its conformance to the specification in the Program Documentation and send it to the Licensee on the appropriate media as soon as possible, with an expected response time within 3 business days;

4.4.2 Non-critical Problems: On a best efforts basis, Visokio Ltd. will attempt to generate a fix for incorporation in the next New Release with an expected response time of 1 week. Where feasible, Visokio Ltd. may provide temporary workaround to the Licensee. In no circumstances may Visokio Ltd. be required to correct a Non-critical Problem reported by the Licensee and Visokio Ltd. reserves the right to abandon attempts at a fix where the costs of the fix are likely to be excessive or the benefits to Visokio Ltd's customer base at large are likely to be negligible at Visokio Ltd's absolute discretion.

4.5 Software Support shall not include the diagnosis and rectification of any fault resulting from:

4.5.1 the improper use operation or neglect of either the Licensed Program Materials or the Designated Equipment;

4.5.2 the modification of the Licensed Programs

4.5.3 the use of the Licensed Programs on equipment other than the Designated Equipment;

4.5.4 the failure by the Licensee to implement recommendations in respect of, or solutions to faults previously advised by Visokio Ltd.;

4.5.5 any repair adjustment alteration or modification of the Licensed Programs without Visokio Ltd's prior consent;

4.5.6 any breach by the Licensee of any of its obligations under any License Agreement in respect of the Licensed Programs;

4.5.7 the Licensee's failure to install and use upon the Designated Equipment in substitution for the previous release any New Release of the Licensed Programs;

4.5.8 the use of the Licensed Programs for a purpose for which they were not designed.

4.7 Without prejudice to clauses above Visokio Ltd. shall be entitled to levy reasonable Additional Charges in the manner set out in clause 4.8 below if Software Support is provided in circumstances where any skilled and reasonable Systems Administrator would have adjudged the Licensee's request to have been unnecessary.

4.8 Additional Charges shall be levied by Visokio Ltd. monthly in arrears and shall be payable by the Licensee (together with Value Added Tax thereon) within 30 days of receipt of any invoice thereafter.

## **5 Duration**

This agreement shall continue until terminated in accordance with clause 6 below

## **6 Termination**

6.1 This agreement may be terminated:

6.1.1 by the Licensee upon giving not less than 30 days notice to Visokio Ltd. expiring on the last day of the Term;

6.1.2 forthwith by Visokio Ltd. if the Licensee fails to pay any sum due hereunder within 30 days of the due date therefore;

6.1.3 forthwith by either party if the other commits any material breach of any term of this agreement (other than one falling within 6.1.2 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;

6.1.4 forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administrative order (otherwise than for the purpose of an amalgamation or reconstruction).

6.2 Any termination of this agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party not the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination

## **7 Indemnities and Limit of Liability**

7.1 There are no warranties conditions guarantees or representations whether expressed or implied by statute or otherwise orally or in writing except as provided herein

7.2 If Visokio Ltd. without cause fails to perform Software Support in accordance with its obligations in this agreement the Licensee may recover an amount to compensate for any direct physical loss which is suffered as a result of such failure subject always to a maximum aggregate liability in any calendar year of the total annual charges paid or payable for Software Support contracted for by Licensee

7.3 Visokio Ltd. will not be liable in any way for any losses caused by the Licensee's failure to perform its obligations hereunder including but not limited to any failure of the Licensee to make adequate provision for recovery of lost or corrupted data files or programs and the Licensee shall indemnify Visokio Ltd. and its employees and representatives in respect of any claims by third parties which are occasioned by or arise from any Visokio Ltd. performance or non-performance pursuant to the instructions of the Licensee or its authorised representatives

7.4 Except as otherwise stated in this clause Visokio Ltd. shall not be liable in any event for any loss of profits goodwill or any type of indirect special incidental or consequential loss or damage suffered by the Licensee (even if such loss was reasonably foreseeable or notified to Visokio Ltd.) or arising from loss of data or arising from the Software Support provided hereunder

## **8 Property and Confidentiality in the Software**

8.1 The Licensed Program Materials contain confidential information of Visokio Ltd. and all copyright trade marks and other intellectual property rights to the Licensed Program Materials are the exclusive



property of Visokio Ltd.

8.2 The Licensee shall:

8.2.1 reproduce on any copy of the Licensed Program Materials Visokio Ltd. copyright and trade mark notices;

8.2.2 maintain an up to date written record of the number of copies of the Licensed Program Materials and their location and upon request forthwith produce such records to Visokio Ltd.; and

8.2.3 without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of Visokio Ltd. in the Licensed Program Materials

## 9 Assignment

The Licensee shall not be entitled to assign this agreement nor any of its rights or obligations hereunder without the prior consent of Visokio Ltd.

## 10 Entire Agreement

Visokio Ltd. shall not be liable to the Licensee for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of this agreement other than those representations agreements statements or undertakings confirmed by a duly authorised representative of Visokio Ltd. in writing or expressly incorporated or referred to in this agreement

## 11 Law

This agreement shall be governed and construed in accordance with English Law and the parties hereto agree to submit to the non-exclusive jurisdiction of the English Courts

**By: Visokio Ltd.**

**Date:** \_\_\_\_\_

**By: Date** \_\_\_\_\_