

Software Support Terms

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1. Support Services

The Support Services are only available to Licensees who have purchased DbvisitProtect and paid the Support Fee. During the DbvisitProtect Term, Avisit shall provide the following services in relation to the Software by telephone, web or email:

- a) Error Correction. Where the Software does not operate in accordance with the specifications published in the Documentation, Avisit shall work to diagnose and rectify all reproducible errors that materially affect the operation of the Software as follows:
 - i. The Licensee shall notify Avisit of any such errors in writing, with a written description of each claimed error and the conditions under which it occurred, and the associated trace file(s) produced by the Software;
 - ii. Avisit shall work to correct all such errors that it can verify based on the Licensee information, and shall continue working either until it corrects the error, develops a workaround for that error, or determines in good faith that the error cannot be corrected as part of the then current releases of the Software (in which event Avisit shall attempt to correct or eliminate the error in the next release of the Software);
 - iii. If Avisit discovers that the Software error is due to a documented or undocumented internal Oracle error or other error unrelated to the Software, Avisit has no further responsibility to correct the Software error.
- b) Response Time. Between the hours of 8.00am and 5.00pm Monday through Friday New Zealand time (excluding New Zealand public holidays). Avisit shall use its reasonable endeavours to respond to the Licensee within 48 hours of a notice under clause 1(a)(i).
- c) Maintenance Updates. The Licensee will receive all standard Maintenance Updates released by Avisit for the Software during the DbvisitProtect Term. The cost of these Maintenance Updates is included in the Support Fee.
- d) Exclusions. The Support Services shall not include the diagnosis and rectification of any fault resulting from:
 - i. the use or operation of the Software not in accordance with the Documentation;
 - ii. the merger of the Software (in whole or in part) with any other software except as permitted by the License Agreement;
 - iii. the failure by the Licensee to implement recommendations in respect of or solutions to faults previously advised by Avisit;
 - iv. any repair, adjustment, alteration or modification of the Software by any person other than Avisit without Avisit's prior consent;

- v. the Licensee using a release of the Software which is not the latest release of the Software or is not the release which was issued prior to the latest release of the Software.
 - vi. the use of the Software for a purpose for which it was not designed;
 - vii. rectification of lost or corrupted data;
 - viii. loss or damage caused directly or indirectly by operator error or omission;
 - ix. loss, damage or faults caused directly or indirectly by any alteration, upgrade or new release of any software operating in conjunction or closely with the Software;
 - x. Oracle errors that are not reported directly back to Dbvisit through the feedback of SQL (structured query language);
 - xi. Oracle internals errors;
 - xii. Oracle faults and bugs;
 - xiii. Operating system errors;
 - xiv. a fault in the equipment or in any other software operating in conjunction with or closely with the Software; or
 - xv. causes other than ordinary use.
- e) Avisit may, at its discretion, upon request by the Licensee provide support services in the circumstances set out in clause 1 (d) above. If Avisit elects to do so, it shall be entitled to levy Additional Charges for those support services.
- f) In addition to clause 1(e) above, Avisit shall be entitled to levy reasonable Additional Charges if support services are provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Licensee's request to have been outside the terms of the Support Services.
- g) Additional Charges shall be agreed in writing by the Licensee and paid within 45 days of the date of the relevant Invoice.

2. Support Fee

- 2.1. Avisit shall provide the Support Services during the DbvisitProtect Term.
- 2.2. Upon expiry of a DbvisitProtect Contract the Licensee will pay the Support Fee for the renewal of the DbvisitProtect Contract within 30 days of the date of the renewal Invoice from Avisit. On payment, Avisit shall provide the Support Services to the Licensee during each year of the DbvisitProtect Term.
- 2.3. Avisit may change the Support Fee at the end of the DbvisitProtect Term provided that any change shall not cause the annual price of AvisitProtect to exceed:
- a) 25% (if the new DbvisitProtect Term is 1 year);
 - b) 22%(if the new DbvisitProtect Term is 2 years); or
 - c) 19% (if the new DbvisitProtect Term is 3 years),
- of the then current Dbvisit published license fee for the Software.

- 2.4. Unless otherwise stated, all amounts are exclusive of goods and services tax payable under the Goods and Services Tax Act 1985 which must be paid, if applicable, at the time of payment of each Invoice.

3. Term

The Support Services shall continue as long as the Licensee has a fully paid DbvisitProtect Contract or until termination in accordance with the provisions of clause 4 below.

4. Termination

- 4.1. The Support Services may be terminated:
- a) by the Licensee giving not less than 90 days' written notice to Avisit;
 - b) forthwith by Avisit if the Licensee fails to pay any sum due hereunder within 45 days of the due date therefore;
 - c) forthwith by the Licensee if Avisit materially fails to comply with its obligations to provide Support Services under these terms which (in the case of a breach capable of being remedied) shall not have been remedied within 90 days of a written request to remedy the same;
 - d) forthwith by Avisit if the Licensee shall become Insolvent;
 - e) by Avisit giving not less than 90 days' written notice to the Licensee.
- 4.2. Any termination of the Support Services pursuant to this clause 4 shall be without prejudice to any other rights or remedies to which Avisit and the Licensee may be entitled hereunder or at law.
- 4.3. If the Licensee terminates the Support Services pursuant to clause 4.1 (a), (b) or (d) Avisit shall not refund to the Licensee any Support Fees paid for the then current period of the DbvisitProtect Term.
- 4.4. If Avisit terminates the Support Services pursuant to clause 4.1(e) or if the Licensee terminates the Support Services pursuant to clause 4.1(c), Avisit shall promptly refund to the Licensee the unused portion of the Support Fees paid for the then current period of the DbvisitProtect Term.
- 4.5. The termination of the Support Services does not affect the License Agreement. However, if the License Agreement is terminated for any reason then the Support Services will automatically terminate and no refund of any unused portion of the Support Fees paid for the then current period of the DbvisitProtect Term will be paid.

5. Renewal and Reinstatement

- 5.1. At the end of the DbvisitProtect Term Avisit shall invoice the Licensee for the upcoming year, or years, of an additional AvistProtect Term.
- 5.2. If the Support Services are terminated or expire for any reason, the Support Services may be reinstated on payment of a fee equal to

the Support Fees that would have been payable had the Support Services not been terminated or expired.

6. Warranty

- 6.1. Subject to the exceptions set out in clause 1(d) and the limitations detailed in clause 7 below, Avisit warrants that it will perform the Support Services with reasonable care and skill in accordance with generally acceptable industry practices using personal reasonably trained and experienced in the Software.
- 6.2. Subject to the clause 6.1, all warranties, express or implied statutory or otherwise in respect of the provision of the Support Services are hereby excluded to the fullest extent permitted by law.

7. Liability

- 7.1. Avisit shall not be liable for any loss or damage sustained or incurred by the Licensee or any third party (including, without limitation, any loss of use of the latest New Release or loss of or spoiling of the Licensee's data) resulting from any defect or error in the latest New Release except to the extent that such loss or damage arises from any unreasonable delay by Avisit in providing the Support Services and then only to the extent not excluded by these terms.
- 7.2. Avisit shall not be responsible for the maintenance, accuracy or good running of any version of the Software except the latest New Release and the release prior to the latest New Release.
- 7.3. The aggregate cumulative liability of Avisit arising out of these terms is limited to an amount not exceeding the total Support Fee for the Support Services paid by the Licensee for the year in which the liability arises.
- 7.4. Avisit shall not be liable to the Licensee for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of warranty, contract or otherwise.
- 7.5. Avisit shall not be liable to the Licensee for any loss arising out of a failure by the Licensee to keep full and up to date security copies of the Software and data it uses in accordance with best computing practice.

8. Force Majeure

- 8.1. Neither Avisit nor the Licensee shall be liable for any breach of these terms to extent that that breach was caused by a Force Majeure event.
- 8.2. Each of Avisit and the Licensee agree to give notice forthwith to the other upon becoming aware of a Force Majeure event such notice to contain details of the circumstances giving rise to the Force Majeure event.
- 8.3. If a default due to a Force Majeure event shall continue for more than 13 weeks then the party not in default shall be entitled to terminate these terms. Neither Avisit nor the Licensee shall have any liability to the other in respect of such termination as a result of a Force Majeure event.

9. Waiver

The waiver by either Avisit or the Licensee of a breach or default of any of these terms by the other shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Avisit or the Licensee to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other.

10. Notices

Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class post or by email or facsimile (in all cases to be confirmed by letter posted within 12 hours) to the address of the other set out or referred to in the License Agreement (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served and deemed to have been received (if delivered) at the time of delivery (if sent by post) upon the expiration of 72 hours after posting and (if sent by email or facsimile) upon the expiration of 12 hours after dispatch.

11. Invalidity and Severability

If any provision of these terms shall be found by any court to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of these terms and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

12. Entire Agreement

Avisit shall not be liable to the Licensee for loss arising from or in connection with any representations, agreements, statements or undertakings in relation to the Support Services made prior to the date of execution of the License Agreement.

13. Other Matters

- 13.1. These terms shall be bind and inure for the benefit of the successors in title of Avisit and the Licensee.
- 13.2. The Licensee shall not be entitled to assign these terms nor any of its rights or obligations hereunder. Avisit may assign its rights and obligations under these terms at any time by notice to the Licensee.
- 13.3. Avisit may change these terms from time to time by giving the Licensee 14 days' notice. Avisit will give notice to the Licensee of any change in accordance with clause 10 or by providing relevant information on the Avisit website.
- 13.4. These Terms shall be governed by and construed in accordance with New Zealand law and Avisit and the Licensee agree to submit to the exclusive jurisdiction of the New Zealand courts.

14. Definitions

"Avisit" means Avisit Solutions Limited;

"DbvisitProtect" or "AvisitProtect Contract" means the software support and maintenance contract for Avisit Solutions Software.

"DbvisitProtect Term" means the period of time covered by the DbvisitProtect Contract.

"Additional Charges" means charges in addition to the Support Fee as described in clause 1(e) and (f);

"Documentation" means the License Agreement and the Dbvisit Installation Guide and User Manual included with the Software;

"Effective Date" means the date on which the License Agreement is accepted by the Licensee;

"Emergency" means an emergency due to an actual or potential occurrence (such as fire, flood, storm, earthquake, explosion, accident, epidemic or war like action), which endangers or threatens to endanger the safety or health of persons, or destroys or damages or threatens to destroy or damage, property;

"Force Majeure" means any cause which is not reasonably within the control of the party affected including industrial disputes of any kind, Emergencies, governmental restraint, expropriation or prohibition, inability or delay in granting or obtaining governmental approvals, consents, permits, licenses or authorities but does not include a delay resulting from an inability to obtain financing;

"Invoice" means the document issued by Avisit detailing the items, quantity and agreed prices for the Software and Support Services;

"Insolvent" means being insolvent (as defined in the Insolvency Act 1967) or having a controller appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction;

"License Agreement" means the license agreement recording the terms on which the Software is licensed to the Licensee;

"Licensee" means a person or company who is licensed to use the Software by Avisit and has accepted the License Agreement;

"License Fee" means the fee payable by the Licensee under the License Agreement;

"Maintenance Update" means any corrected version of the Software from time to time issued by Avisit but does not include new versions or upgrades of any Software for which Avisit generally charges an additional fee (for example any new modules or products Avisit releases that are commercially sold separately);

"New Release" means any improved or modified version of the Software from time to time issued by Avisit;

"Support Fee" means the charges for the AvistProtect Contract as described in clause 2;

"Support Services" means, subject to the exclusions in clause 1(d), the services described in clause 1 (a), (b) and (c); and

"Software" means Dbvisit software purchased by Licensee and as described in the License Agreement.