

## **SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT**

THIS AGREEMENT is made on the support contract subscription date BETWEEN you ("the Licensee", either an individual or a single entity) and GerritForge Ltd ("the Licensor")

### **WHEREAS:**

- (1) The Licensor has agreed to provide the Licensee with certain support and maintenance services, on the terms and conditions set out in this agreement.

### **NOW IT IS AGREED as follows:**

#### **1 DEFINITIONS**

In this agreement the following expressions shall have the following meanings:

- 1.1 "Intellectual Property Rights" means all vested, contingent and future intellectual property rights including but not limited to copyright, trade marks, design rights, trade names, patents, know-how, trade secrets, database rights or any similar right exercisable in any part of the world including any application for the registration of any patents or registered designs or similar registrable rights in any part of the world;
- 1.2 "The Maintenance Services" means the maintenance services to be provided by the Licensor to the Licensee as outlined in clause 6 of this agreement;
- 1.3 "The Media" means the media on which the Software and the Program Documentation are recorded or printed;
- 1.4 "The Program Documentation" means the user instructions, operating manuals and all other related materials supplied by the Licensor to enable the proper operation and functionality of the Software. The Licensor shall provide the Licensee with one copy of the Program Documentation;
- 1.5 "The Program Materials" means the Software, the Program Documentation and the Media;
- 1.6 "The Software" means the computer software applications outlined in Schedule 1 to this agreement (including all updates, enhancements, modifications, versions, and all replacement or amendment products from time to time offering the same or similar functionality);
- 1.7 "The Support and Maintenance Fee" means the fee for the Support Services and the Maintenance Services outlined in Schedule 2 to this agreement;
- 1.8 "The Support Services" means the support services to be provided by the Licensor to the Licensee as outlined in clause 5 of this agreement.

#### **2 SERVICES TO BE PROVIDED**

During the term of this agreement the Licensor agrees to provide to the Licensee:

- 2.1 the Support Services;
- 2.2 the Maintenance Services;

#### **3 TERM**

The services to be provided under this agreement shall commence on the date on which the Software Programs are accepted or deemed to be accepted by the Licensee ("the Commencement Date") and shall continue until Software License expiry date or terminated in accordance with any clause of this agreement.

#### **4 PAYMENT**

- 4.1 The Support and Maintenance Fee shall be paid by the Licensee in accordance with Schedule 2 to this agreement. The Support and Maintenance Fee is exclusive of any applicable VAT. No support shall be provided until the Licensor has received payment in accordance with Schedule 2.

- 4.2 Any charges to be paid by the Licensee under this agreement shall be paid within 7 calendar days of receipt by the Licensee of the Licensor's invoice.
- 4.3 The Licensor shall have the right to charge interest on overdue invoices at a rate of 8% per annum above the base rate of the Bank of England from time to time in force from the date when payment becomes due from day to day until the date of payment.
- 4.4 The Licensor shall be entitled to increase the Support and Maintenance Fee in accordance with any change in the Licensor's standard scale of charges by giving to the Licensee not less than 90 days prior written notice.

## **5 SUPPORT SERVICES**

5.1 During the term of this agreement the Licensor shall provide the following support services to the Licensee:

5.1.1 Technical support is provided to Licensee paying account holders and is only available via email (support@gitenterprise.com) on a 8x5 basis, Monday through Friday, 8:30 AM - 04:30 PM (British Standard Time), England and Wales Bank Holidays excluded.

5.1.2 Community-based support is provided to Licensee through the Gerrit Code Review forum at <https://groups.google.com/forum/#!forum/repo-discuss> on a best-effort basis.

5.1.3 Support is only available in English.

5.2 The Licensee shall supply to the Licensor a detailed description of any fault requiring support services and the circumstances in which it arose, and shall submit sufficient material and information to enable the Licensor's support staff to duplicate the problem.

## **6 MAINTENANCE SERVICES**

During the term of this agreement the Licensor shall provide the following maintenance services to the Licensee:

6.1 Error Correction

6.1.1 The Licensor shall ensure that all faults in the Software shall be classified and handled as shown below. Failures shall be classified as to the severity that they have on the working system. The severity classification shall be used to determine the response time for returning the system to its fully operational state. The severity classification shall be:

- (i) Class P1: Emergency. Any Software problem resulting in complete outage or loss of service or functionality;
- (ii) Class P2: Urgent. Any Software problem that reduces software service and functionality, system security or data integrity, or which represents a serious threat to service;
- (iii) Class P3: Non-urgent. Low level Software or procedural problems requiring resolution in defined time scales;
- (iv) Class P4: Low. Other low level Software or procedural problem.

6.1.2 The following targets shall be adopted by the Licensor for answering via e-mail with a technical suggestion, workaround and/or solution:

### Base / Silver / Gold / Platinum Packages – Best Effort SLA

Class P1, P2, P3, P4: as soon as possible from the receipt of a fully detailed report and Software logs from the Licensee

### Silver / Gold / Platinum Packages – 8x5 GMT Time-zone SLA

Class P1: within 24 hours of receipt of a fully detailed report and Software logs from the Licensee;

Class P2: within 5 working days (excluding UK Bank Holidays) of receipt a fully detailed report and Software logs from the Licensee;

Class P3: within 30 working days (excluding UK Bank Holidays) of receipt a fully detailed report and Software logs from the Licensee;

Class P4: by one of the next Software releases

### Gold / Platinum Packages – 24x5 SLA

Class P1: within 8 hours of receipt of a fully detailed report and Software logs from the Licensee;

Class P2: within 24 hours of receipt a fully detailed report and Software logs from the Licensee;

Class P3: within 5 working days (excluding UK Bank Holidays) of receipt a fully detailed report and Software logs from the Licensee;

Class P4: within 30 working days (excluding UK Bank Holidays) of receipt a fully detailed report and Software logs from the Licensee;

### Platinum Package – 24x7 SLA

Class P1: within 4 hours of receipt of a fully detailed report and Software logs from the Licensee;

Class P2: within 8 hours of receipt a fully detailed report and Software logs from the Licensee;  
Class P3: within 24 hours of receipt a fully detailed report and Software logs from the Licensee;  
Class P4: within 5 working days (excluding UK Bank Holidays) of receipt a fully detailed report and Software logs from the Licensee;

6.1.3 The Licensee shall determine the severity of classification of faults as they arise.

6.1.4 The error correction service referred to in this clause 6.1 shall not apply to any version of the Software other than the current release or to defects or errors resulting from any unauthorised modification or incorrect use of the current release (including use of the current release on or with faulty equipment or programs used in conjunction with the current release or on or with equipment (other than such computer equipment on which the Software is installed and in operational use) or programs not supplied by or approved in writing by the Licensor, provided that for this purpose any programs designated for use with the current release in the Specification shall be deemed to have the written approval of the Licensor).

6.1.5 The Licensee shall be charged in accordance with the Licensor's current standard scale of charges for any services provided by the Licensor at the request of the Licensee which are excluded under clause 6.1.4 or which the Licensor finds are unnecessary.

## 6.2 Releases

6.2.1 The Licensor shall inform the Licensee promptly of any improved version of the Software that the Licensor shall make from time to time and shall deliver to the Licensee as soon as reasonably practicable the object code of the new release in machine-readable form together with the Program Documentation.

## 6.3 Technical Advice

6.3.1 Technical advice will be provided by the Licensor to resolve any difficulties or questions the Licensee may have with regard to the use of any current release. Such technical advice shall be provided by e-mail through support@gitenterprise.com or via community-based forum at <https://groups.google.com/forum/#!forum/repo-discuss>.

## 7 EXCLUSIONS

7.1 The Licensor shall not be obliged to provide Support Services or Maintenance Services in respect of:

7.1.1 any software other than the Software;

7.1.2 defects or errors resulting from any unauthorised modification of the Software or the equipment on which the Software is installed and in operational use;

7.1.3 defects or errors resulting from incorrect use of the Software (including use of the Software on faulty equipment or with computer hardware, operating systems or other supporting software other than those specified in the Program Documentation); and

7.1.4 any programs not supplied by or approved in writing by the Licensor.

7.1.5 any Open-Source Software component included and/or used in the Software (other than the Software OpenSource code published on <https://gerrit-review.googlesource.com/#/admin/projects/gerrit>).

7.2 The Licensee shall be charged in accordance with the Licensor's current standard scale of charges for any Support Services and Maintenance Services provided by the Licensor at the request of the Licensee which are excluded under clause 7.1.

7.3 Where a new version of the Software has been available to the Licensee the Licensor reserves the right to discontinue the Support Services and Maintenance Services for any prior version of the Software.

7.4 The Licensor shall not be obliged to make modifications or provide support in relation to the Licensee's computer hardware, operating system software, or third party application software or any data feeds or external data.

## 8 LICENSEE'S UNDERTAKINGS

8.1 The Licensee undertakes not to alter or modify the Program Materials in any way whatsoever, nor to permit the whole or any part of the Software to be combined with, or become incorporated in, any other programs.

8.2 The Licensee undertakes during the continuance of the Licence to:

8.2.1 keep the Program Materials and all copies under the Licensee's effective control and to maintain adequate security measures to protect the Program Materials from access or use by any unauthorised person;

8.2.2 comply with all reasonable instructions of the Licensor with regard to the use of the Program Materials;

8.2.3 maintain an accurate and up-to-date record of all copies of the Program Materials and shall produce such record to the Licensor on request from time to time.

## **9 WARRANTIES**

9.1 The Licensor warrants that the services to be supplied under this agreement will be carried out with reasonable skill and care by suitably qualified personnel.

9.2 Unless expressly provided in this agreement all other guarantees, representations and warranties of any kind, whether express or implied, including, without limitation, the implied warranties of satisfactory quality, merchantability and fitness for a particular purpose or ability to achieve a particular result are hereby excluded, so far as such exclusion or disclaimer is permitted under the applicable law.

9.3 It shall be the responsibility of the Licensee to ensure that the facilities and functions described in the Specification meet its requirements.

9.4 In the event of any breach of any warranty in this agreement, the Licensor shall, as the Licensee's sole remedy, remedy such breach and if the Licensor is unable to remedy such breach, the Licensor shall refund any fees paid for the year in which the services, the subject of such claim, were supplied and this agreement shall immediately terminate.

9.5 The Licensor shall use its reasonable endeavours to correct any errors but does not warrant that all such errors can and will be corrected.

9.6 In the event of any breach of any warranty the Licensee must notify the Licensor within 3 months in order to benefit from the remedy mentioned above.

## **10 INDEMNITY**

Without prejudice to any other rights or remedies available to the Licensee, the Licensor shall indemnify the Licensee for personal injury or death, and against all loss of or damage to any tangible Licensee property, caused by the negligence of the Licensor or its employees or agents in relation to the performance of their duties under this agreement.

## **11 LIMITATION OF LIABILITY**

11.1 Subject to clause 11.3, in no event shall the Licensor be liable for any damages, including loss of business, loss of opportunity, loss of data, loss of profits or for any other indirect or consequential loss or damage whatsoever that is an indirect or secondary consequence of any act or omission of the Licensor whether such damages were reasonably foreseeable or actually foreseen.

11.2 Subject to clause 11.3, the total liability of the Licensor to the Licensee under this agreement shall not exceed the greater of either:

11.2.1 125% of the total of all sums paid or due to the Licensor under this agreement.

11.3 Nothing in this agreement shall exclude or limit the liability of the Licensor for fraudulent misrepresentation or for death or personal injury resulting from the negligence of the Licensor or its employees or agents.

## **12 CONFIDENTIALITY**

12.1 Either party receiving information ("the Recipient") from the other marked "confidential" or which may reasonably be supposed to be confidential, including, without limitation, information contained in the Program Materials, the Specification and other information supplied by the Licensee or Licensor, shall not without the other's prior written consent use such information except for the purposes of this agreement or disclose such information to any person other than to their own employees or agents who have a need to know.

12.2 Clause 12.1 shall not apply to information that is lawfully known to the Recipient at the time of disclosure or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is ordered to be disclosed to a regulatory body or a court of competent jurisdiction.

12.3 The Recipient shall ensure that any person referred to in clause 12.1 is bound by similar confidentiality terms to those in this clause 12.

12.4 The confidentiality terms in this clause 12 shall remain in full force and effect during the term of this agreement and upon the termination of the Licence or this agreement.

## **13 TERMINATION**

- 13.1 If the Licensee permanently discontinues the use of the Program Materials or commits a material breach or persistent breaches of this agreement, and in the case of a breach which is capable of being remedied, fails to remedy the breach within 14 days of written notice from the Licensor to do so, then the Licensor may terminate this agreement forthwith on giving written notice to the Licensee. The Licensee shall not be entitled to any refund of the Support and Maintenance Fee or any part thereof that has been paid.
- 13.2 Either party may terminate this agreement at any time by giving at least 60 days' prior written notice to the other.
- 13.3 In the event of termination of this agreement, the Licence shall terminate in accordance with any such licence agreement.
- 13.4 Any termination of the Licence or this agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

## **15 FORCE MAJEURE**

Neither party shall be liable to the other party for any delay or failure to perform any of its obligations under this agreement if the delay or failure results from events or circumstances outside its reasonable control, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party in writing of the nature and extent of such events. If such circumstances continue for a continuous period of more than 28 days, either party may terminate this agreement by written notice to the other party.

## **16 ASSIGNMENT**

This agreement is personal to the parties and neither this agreement nor any rights, licences or obligations under it may be assigned by either party without the prior written approval of the other party.

## **17 WAIVER**

Failure or neglect by either party to exercise any of its rights or remedies under this agreement will not be construed as a waiver of that party's rights nor in any way affect the validity of the whole or part of this agreement nor prejudice that party's right to take subsequent action.

## **18 SEVERANCE**

If any provision of this agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

## **19 NOTICES**

Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the most recent email address, fax number or address notified to the other party, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served 2 days following the date of posting.

## **20 ENTIRE AGREEMENT**

This agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. This agreement may be varied only by a document signed by both parties.

## **21 GOVERNING LAW AND JURISDICTION**

This agreement shall be governed by and construed in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

# SCHEDULE 1

## **THE SOFTWARE – Gerrit Code Review Ver. 2.5 or later**

Gerrit Code Review (<https://code.google.com/p/gerrit>) is an OpenSource web based code review system, facilitating online code reviews for projects using the Git version control system.

Gerrit makes reviews easier by showing changes in a side-by-side display, and allowing inline comments to be added by any reviewer.

Gerrit simplifies Git based project maintainership by permitting any authorized user to submit changes to the master Git repository, rather than requiring all approved changes to be merged in by hand by the project maintainer. This functionality enables a more centralized usage of Git.



**GerritForge Ltd**

<http://www.gerritforge.com>  
support@gerritforge.com

**Gerrit Code Review**

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Enterprise Support Terms and Conditions  
Service Level Agreement

Gerrit is released under software license Apache License 2.0 <http://www.apache.org/licenses/LICENSE-2.0>

The additional Gerrit plugins (<https://gerrit-review.googlesource.com/#/admin/projects/?filter=plugins>) are NOT considered as part of the Software.



## SCHEDULE 2

### SUPPORT AND MAINTENANCE FEE

Lump sum payable at the commencement of the agreement for the first 12 months according to the price list published on <http://www.gerritforge.com/support>

All prices are exclusive of UK VAT or other national taxation.

After the first 12 months a periodical payment may be due.

## SCHEDULE 3

### THE SPECIFICATION

The complete Gerrit Code Review documentation is included in the Gerrit product page at path /Documentation/index.html