

SOFTWARE SUPPORT AGREEMENT

1. IDENTIFICATION OF THE PARTIES. This Agreement is made between **XXXXXXXXXXXX** (the "Customer") with a principal place of business at **XXXXXXXXXXXX** and Goodfellows Design Ltd trading as Harlequin Solutions (the "Developer") with a principal place of business at 2 Exmoor Street, London W10 6BD.

2. PURPOSE OF AGREEMENT. The Customer desires to retain the Developer as an independent contractor to provide the computer software maintenance for its PUNCH Content Management System which supports the Customer's **XXXXXX**. The Developer is ready, willing and able to provide this service and agrees to do so under the terms and conditions set forth in this Agreement.

3. MAINTENANCE OF SOFTWARE. Beginning on the day of the execution of this agreement the Developer shall provide the following error-correction and support services:

(a) telephone hot-line support during the Developer's normal days and hours of business operation. Such support shall include consultation on the operation and utilization of the Software; and

(b) error correction services, consisting of the Developer using all reasonable efforts to design, code and implement programming changes to the Software, and modifications to the documentation, to correct reproducible errors therein so that the Software is brought into substantial conformance with the Specification.

The response times for correcting errors are as follows:

LEVEL ONE RESPONSE: Where a major fault occurs such that a business critical function is not operational and major user inconvenience is being caused then; between 9 a.m. and 5.30 p.m. Monday through Friday the Developer shall endeavour to respond within four hours; or

LEVEL TWO RESPONSE: Where a fault occurs such that a function is not operational but a workaround is available and is causing significant user inconvenience then; between 9 a.m. and 5.30 p.m. Monday through Friday, the Developer Solutions shall respond within one day; or

LEVEL THREE RESPONSE: Where a fault occurs such that a non-critical function is not operational and is causing an inconvenient problem but is not causing significant user inconvenience then; between 9 a.m. and 5.30 p.m. Monday through Friday, the Developer shall respond within three working days; or

LEVEL FOUR RESPONSE: Where a fault occurs such that a cosmetic, non-urgent problem is being caused, e.g. a field is in the wrong position then; between 9 a.m. and 5.30 p.m. Monday through Friday the Developer shall respond within five days.

4. PAYMENT FOR MAINTENANCE. The Customer shall pay the Developer for error-correction and support services the annual sum of £**XXXX** payable in annually in advance beginning on the day of the execution of this agreement.

5. THE CUSTOMER'S ROLE IN MAINTENANCE. The provision of the error-

correction and support services described above shall be expressly contingent upon the Customer promptly reporting any errors in the Software or related documentation to the Developer on the Developers Jobtracker System and not modifying the Software without the Developer's written consent.

6. TERM OF SUPPORT. Subject to timely payment by the Customer of the maintenance fees, the Developer shall offer the maintenance described above for a minimum of 1 year after completion of the development work under this Agreement.

7. THE CUSTOMER TERMINATION OF MAINTENANCE. The Customer may discontinue the maintenance services described above upon not less than 90 days' written notice to the Developer.

8. LIMITATIONS OF THE DEVELOPER'S LIABILITY TO THE CUSTOMER.

(a) In no event shall the Developer be liable to the Customer for lost profits of the Customer, or special or consequential damages, even if the Developer has been advised of the possibility of such damages.

(b) The Developer's total liability under this Agreement for damages, costs and expenses, regardless of cause, shall not exceed the total amount of fees paid to the Developer by the Customer under this Agreement.

9. CONFIDENTIALITY. During the term of this Agreement and for 1 year afterward, the Developer will use reasonable care to prevent the unauthorized use or dissemination of the Customer's confidential information. Reasonable care means at least the same degree of care the Developer uses to protect its own confidential information from unauthorized disclosure.

Confidential information is limited to information clearly marked as confidential, or disclosed orally that is treated as confidential when disclosed and summarized and identified as confidential in a writing delivered to the Developer within 15 days of disclosure.

Confidential information does not include information that:

- the Developer knew before the Customer disclosed it
- is or becomes public knowledge through no fault of the Developer
- the Developer obtains from sources other than the Customer who owe no duty of confidentiality to the Customer, or
- the Developer independently develops.

10. TAXES. The charges included here do not include VAT. If the Developer is required to pay any value added taxes based on the services provided under this Agreement, the taxes shall be separately billed to the Customer. The Developer shall not pay any interest or penalties incurred due to late payment or nonpayment of such taxes by the Customer.

11. THE DEVELOPER AN INDEPENDENT CONTRACTOR. The Developer is an independent contractor, and neither the Developer nor the Developer's staff is, or shall be deemed, the Customer's employees.

12. OFFERS OF EMPLOYMENT. The Customer undertake that no offers of employment will be made to any employee of the Developer or introduce to a third party as a result of work carried out by the Developer on behalf of the client during the currency of this agreement or for a period of 12 months after its termination without the prior consent of the Developer. Should this occur and result in employment directly or indirectly, the client will become liable to pay the Developer a fee of £10,000. Such restrictions shall also apply in respect of any person under contract to provide his or her personal services to the Developer or the client.

13. LEGAL FEES. If any legal action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable legal fees, costs and expenses.

14. GENERAL PROVISIONS.

(a) Complete Agreement. This Agreement together with all exhibits, appendices or other attachments, which are incorporated herein by reference, is the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter. In the event of a conflict between the provisions of the main body of the Agreement and any attached exhibits, appendices or other materials, the Agreement shall take precedence.

(b) Modifications to Agreement. Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

(c) The Contract. Any contract to which these conditions apply will in all respects be constructed and operated according to English law and will be subject to the English courts.

(d) Notices. All notices and other communications given in connection with this Agreement shall be in writing and shall be deemed given as follows:

- When delivered personally to the recipient's address as appearing in the introductory paragraph to this Agreement; or
- Three days after being deposited in the UK, postage prepaid to the recipient's address as appearing in the introductory paragraph to this Agreement, or
- When sent by fax, the last fax number of the recipient known to the party giving notice. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail, or the recipient delivers a written confirmation of receipt, or
- When sent by email, the last email address of the recipient known to the party giving notice. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail, or the recipient delivers a written confirmation of receipt.

Any party may change its address appearing in the introductory paragraph to this Agreement by giving notice of the change in accordance with this paragraph.

(e) No Agency. Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.

(f) Assignment. The rights and obligations under this Agreement are freely assignable by either party. The Customer shall retain the obligation to pay if the assignee fails to pay as required by this Agreement.

15. SIGNATURES. Each party represents and warrants that on this date they are duly authorized to bind their respective principals by their signatures below.

The Customer: **XXXXXXXXXXXXXXXXXXXXXX**

Signed _____

Date _____

Name _____

Position _____

The Developer: Harlequin Solutions

Signed _____

Date _____

James Barber
Director