

Terms and Conditions of Surveybe Software Technical Support Packages

The following terms and conditions ("Support Terms") shall govern the delivery of Support Services (as defined below) by Economic Development Initiatives (EDI) Ltd ("Company") to the customer ("Customer") ordering the Technical Support Services for the Surveybe Software ("Software").

1. SUPPORT SERVICES

Subject to the terms and conditions set forth herein, during the Support Period, the Company, will provide the Customer with the following Support Services

- Technical Support Services
- Maintenance
- Free Minor and Major Public Releases of the software

1.1 Technical Support Services

1.1.1 Examples of Technical Support Services provided by the Company under a Technical Support Package include; installation help, registration support, licensing, feature requests, bug reports and support with technical difficulties relating solely to the Software. Other, more complex support issues would be covered through bespoke consultancy agreements, and, or training at an additional charge.

1.1.2 Technical support is provided through direct contact to a support person via email, phone and through Skype/Webex or similar conferencing applications as mutually agreed.

1.1.3 A support person will respond within 2 Business Days. These being the hours between 0900 and 1700 in the UK Monday to Friday. English Bank and Public holidays plus office closure dates between Christmas and New Year as listed on www.surveybe.com excluded.

1.1.4 All Customers with a valid software licence are also able to post queries to the online forum where another customer or a support person may respond if desired. The online forum is not a mode of official technical support; official modes are listed in point 1.1.2 above. The Customer acknowledges and accepts that the Company does not accept any responsibility for any content or responses given on the online forum by other customers.

1.1.5 All support and communication from the Company will be in the English language and requests for support from Customers must also be set out in English.

1.2 **Maintenance:** During the term of the Support Period software problems and errors can be reported by email to support@surveybe.com. If the Company determines that a reported reproducible material error in the software exists and significantly impairs the usability and utility of the software, the Company agrees to make reasonable commercial efforts to provide a usable work-around solution, to correct the issue in an upcoming service pack or software release, or provide any other appropriate resolution or response.

1.3 **Free Minor and Major Releases:** The Customer will receive all minor and major software releases that are publicly released during the Support Period.

1.4 **Support Package Sizes:** Technical Support Packages are sold in bundles of hours per annum per licence, with a default minimum of six (6) hours.

1.5 **Support Usage:** Any time spent by an employee of the Company on behalf of a Customer, in relation to Technical Support Services whether in:

- direct communication via email, phone or instant messaging with a Customer; or in

- investigating issues, providing responses and working out solutions offline on behalf of Customer, that are not due to a material error in the Software,

will be deducted in 15 minute increments from the number of hours remaining under the Customer's support package. Any unused time at the end of the Support Period will expire and will not be rolled over or transferred into a new agreement.

2. RESTRICTIONS

2.1 Support Services can only be provided to the Customer when the following conditions are met:

- a. The Customer must have a valid Software licence in order to access Technical Support;
- b. The Customer must have accepted the EULA for the Software;
- c. The Customer has paid the Support Services Fees in full;
- d. The Customer acknowledges and agrees that any Customer data that may be need to be reviewed or handled by the Company and/or EDI in order to meet its obligations for providing technical support, is provided to the Company solely at their own risk and that they are solely responsible for ensuring the safety and security of their data through their own back-up and data transfer protocols.
- e. All of the Customer's obligations under the Software's EULA have been met, including, but not limited to, the Customer must be operating the Software in the necessary technical environment for the proper execution of the Software as described in the Software's EULA.

2.2 The Company may limit or terminate the Support Services being provided if the Customer uses the Support Services in an excessive, abusive or fraudulent manner, as determined by the Company in its reasonable discretion. Examples of such use include a high number of calls/contact that concern previously resolved issues, repeated posing of questions to which the answer is readily found in the documentation, and discussion of issues that are not related to technical support.

2.3 The types of support listed below are a non-exhaustive list of the type of the support that is not related to technical support and is typically covered in a more bespoke consultancy or training arrangement:

- Training a Customer to use the Software
- Designing questionnaires for the Customer
- Configuring/building/creating questionnaires for the Customer
- Provision of any form of consultancy type advice to the Customer in the design of their questionnaire or field implementation of their survey.
- Out of hours support, which can only be arranged in advance and for an additional fee

3. EXCLUSIONS

3.1 The Company shall not be required to provide any Support Services relating to problems or issues arising out of or from (i) Customer's use of the Software in a manner for which they were not designed; (ii) damage to the computer on which the Software are installed; (iii) Customer's negligence, misuse, or modification of the Software, (iv) any issue relating to a third party product; or (v) versions of Software other than the most recent version (e.g., 5.x) and one [major] version back (e.g., 4.x), provided that the Company shall also not be required to provide any Support Services for Software that are no longer listed on its website as supported products

4. FEES AND PAYMENT

4.1 In consideration of the Support Services to be provided to the Customer, the Customer shall first pay the Fees as determined by the level of hours to be provided under the support package and invoiced to the Customer before the service provision commences.

5. WARRANTY AND DISCLAIMER

5.1 The Company will use commercially reasonable efforts to provide the Support Services in a professional manner, but the Company cannot guarantee that every question or problem raised by

Customer can or will be resolved. Nothing in these Support Terms shall be construed as expanding or adding to the warranty for the Software set forth in the Software EULA or any other agreement under which Customer has obtained the Software.

- 5.2 Except for any warranty, condition, representation, or term to the extent to which the same cannot or may not be excluded or limited by law applicable to customer in its jurisdiction, the Company makes, and Customer receives, no warranties or conditions of any kind, express, implied, or statutory, related to or arising in any way out of these Support Terms or the provision of materials or services under these Support Terms. The Company specifically disclaims any implied warranty of merchantability or fitness for a particular purpose.

6. LIMITATIONS AND EXCLUSIONS OF LIABILITY

6.1 Nothing in these Support Terms will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law

6.2 The limitations and exclusions of liability set out in this Clause 5 and elsewhere in the Support Terms:

- (a) are subject to Clause 6.1; and
- (b) govern all liabilities arising under the Support Terms or in relation to the subject matter of the Support Terms, including (but not limited to) liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

6.3 The Company will not be liable to the Customer for or in respect of:

- (a) any losses arising out of a Force Majeure Event;
- (b) any business losses, such as loss of or damage to data, profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill;
- (c) any loss or corruption of any data, database or software including losses or damages that may be suffered in relation to results obtained from the Software's use, or through the provision of Support Services, whether the same are suffered directly or indirectly or are immediate or consequential and whether the same arise in contract or tort (including negligence); or
- (d) any special, indirect or consequential loss or damage,

whether or not the Customer has been notified of the possibility of the same.

6.4 Subject to clause 6.1, the Company's liability to the Customer will not exceed the amount paid by the Customer in respect of Fees for the Technical Support Package pursuant to these Support Terms or any other agreement between the parties.

7. TERM AND TERMINATION

7.1 The Technical Support Package shall commence upon payment of the Fees by the Customer and shall continue for either shorter of one year from its commencement or when the support hours purchased have been used, whichever event occurs first (the "Support Period"), or unless otherwise terminated in accordance with this clause 7.

- 7.2 The Technical Support Package will terminate immediately if there is any breach to any provision in the EULA of the Software or these Support Terms, or in the event that the Licence for the Software has been terminated in accordance with Clause 8 of the EULA.
- 7.3 The Technical Support Package will terminate if the Customer uses the Support Services in an excessive, abusive or fraudulent manner, as described in clause 2.2 above.
- 7.4 The Company may terminate the Support Service without liability to the Customer by giving not less than thirty days prior written notice to the Customer (notice by email shall be acceptable) and any unused portion of the fees paid in advance for Support Services shall be refunded within a reasonable period.

8. EFFECTS OF TERMINATION

- 8.1 Upon termination all the provisions of these Support Terms will cease to have effect, save that the following provisions will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 4,5,6,7 and 9.
- 8.2 Termination of this Technical Support Package will not affect the rights and liabilities of each party that have accrued prior to such termination.
- 8.3 Save as may be expressly provided in these Support Terms, the Customer will not be entitled to a refund upon the termination of this Technical Support Package.

9. GENERAL

- 9.1 Nothing in these Support Terms shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.
- 9.2 These Support Terms contain the entire agreement between the parties with respect to the subject matter hereof, supersedes all previous agreements and understandings between the parties with respect thereto, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 9.3 Each party acknowledges that, in entering into these Support Terms, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided herein, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 9.4 If any provision of these Support Terms is held by any court or other competent authority to be illegal, invalid or unenforceable in whole or part, that provision or part provision shall be deemed deleted and the remaining provisions shall continue with full force and effect.
- 9.5 A notice under or in connection with this agreement shall be valid if delivered personally, sent by commercial courier, fax, pre-paid first-class post or recorded delivery to the address notified by the other from time to time.
- 9.6 A person who is not a party to this agreement shall not have any rights under or in connection with it including by virtue of the Contract (Rights of Third Parties) Act 1999.
- 9.7 These Support Terms shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the jurisdiction of the courts of England.