



## DOTTED EYES

### TECHNICAL SUPPORT SERVICES TERMS AND CONDITIONS

These pages together with the Dotted Eyes Support Selector order form (**Order Form**) tell you the terms and conditions on which we supply technical support services (**Technical Support Services**) for the products (**Products**) listed on our website <http://www.dottedeyes.com> (**our site**) to you. Please read these terms and conditions carefully before ordering any Technical Support Services from our site. You should understand that by ordering any Technical Support Services, you agree to be bound by these terms and conditions. You should print a copy of these terms and conditions for future reference.

#### 1. Information about us

<http://www.dottedeyes.com> is a site operated by Dotted Eyes Limited (**Dotted Eyes, we or us**). We are registered in England and Wales under company number 04471760 and our registered office is Hanbury Court, Harris Business Park, Stoke Prior, Bromsgrove, Worcestershire B60 4JJ. Our VAT number is 551428257.

You are the entity named as the customer on the Order Form (**Customer, you or your**).

#### 2. How the contract is formed between you and us

After placing an order with us for the Technical Support Services using the Order Form (**Order**), you will receive an email from us acknowledging that we have received your Order. This does not mean that your Order has been accepted. Your Order constitutes an offer by you to us to buy the Technical Support Services. All Orders are subject to acceptance by us, and we will confirm such acceptance to you by sending you an invoice and/or an email relating to your Order that confirms that we have accepted your Order (**Order Confirmation**). The contract between us (**the Contract**) shall be governed by these terms and conditions will only be formed when we send you the Order Confirmation.

#### 3. Term

Unless otherwise agreed in writing by us, every Order shall be for an initial period of 12 months from the date shown on the Order Confirmation (**Commencement Date**). The Contract shall renew automatically on each anniversary date of the Commencement Date (each period of 12 consecutive months being a **Contract Year**) with each party having the right, without prejudice to its other rights or remedies, to terminate the Contract with effect from the end of any Contract Year by giving not less than thirty (30) days prior written notice to the other party (**Term**).

#### 4. Technical Support Services

- 4.1. A description of the different levels of Technical Support Services is set out in Schedule 1 hereto.
- 4.2. In consideration of your payment of the relevant support fees set out in the Order Form (the **Support Fees**), we agree to provide you with your selected Technical Support Services for the Term in accordance with these terms and conditions.
- 4.3. You agree that in the event that it becomes necessary (in our reasonable opinion) to visit your premises (**Customer Site**) in order to provide the Technical Support Services) (or any other services which we have agreed to provide to you under the Contract (**Customer Site Visit**), then you shall be charged for the Customer Site Visit

and any such additional services on a time and materials basis at our charge out rates in force at that time.

- 4.4. If at any time during the Term you wish to alter all or any part of the Technical Support Services we shall discuss the proposed change with you and we may, in our sole discretion, provide you with a quotation for the changes you have requested. Quotations shall only be valid for acceptance for a period of 30 days from the date of the quotation. If you accept the quotation the revised Technical Support Services and associated revised Support Fees shall be governed by these terms and conditions.
- 4.5. We reserve the right, at our sole discretion, to make a reasonable charge on a time and materials basis at our charge out rates in force at that time for considering your requested changes (including a charge for wasted costs incurred) and if your request for such alterations is subsequently withdrawn but results in any delay in the performance of the Technical Support Services then we shall not be liable for any such delay.
- 4.6. We shall ensure that our personnel or agents, whilst on the Customer Site, comply with the reasonable regulations governing security and health and safety as have been previously notified in writing by you to us.

## 5. Your Responsibilities

- 5.1. You agree to provide us with access to and use of all of your information, personnel, facilities and relevant parts of your Site as may be reasonably required by us for the purpose of providing the Technical Support Services to you.
- 5.2. You shall take all reasonable precautions to protect the health and safety of our personnel, agents and representatives whilst on your Site.
- 5.3. You shall use all reasonable endeavours to ensure that any information that you supply to us which we require to provide the Technical Support Services is complete, accurate and in the format agreed by us. If you discover that such information is incorrect or inaccurate you will promptly notify us of such errors and provide a correction as soon as reasonably practicable.
- 5.4. You agree to comply with all our reasonable instructions, guidelines and directions in relation to the Technical Support Services.
- 5.5. It is your responsibility at all times to maintain an appropriate data backup procedure to enable the recovery of lost or corrupted data files.
- 5.6. You shall ensure that all equipment required for the performance of the Technical Support Services (**Equipment**) is maintained in accordance with the relevant manufacturer's recommendations; kept in appropriate environmental conditions where appropriate security measures are maintained for the Equipment; and in a state and condition ready and suitable to receive and use the Technical Support Services. We reserves the right to inspect the Equipment and, if not acceptable, to reject it.

## 6. Charges and Payment

- 6.1. As consideration for the provision of the Technical Support Services you shall pay us the Support Fees.
- 6.2. In circumstances where you have requested us (and we have agreed) to provide you with any services in addition to the Technical Support Services (not being Training Services or Translation Services which are covered by the separate terms and conditions available on our site) (**Consultancy Services**) you agree that such Consultancy Services will be charged on a time and materials basis at our relevant Consultancy Service charge out rates in force at that time.
- 6.3. The Support Fees and any additional fees payable under clauses 4.3 & 4.5 or clause 6.2 (**Additional Fees**) are stated to be exclusive of VAT which shall be paid in addition at the rate applicable from time to time in the manner prescribed by law.

- 6.4. Unless otherwise agreed by us in writing, the Support Fees shall be paid in full annually in advance on the date of the Order Confirmation. Any Additional Fees shall be paid in full within 30 days from the date of our invoice.
- 6.5. If any sums invoiced to you are not paid on their due date we reserve the right, without prejudice to any other right or remedy that we may have under these terms and conditions or at law, we have the right to:-
  - a) charge you interest at the rate of four percent (4%) above the base rate of Lloyds TSB Bank plc from time to time in force and to recover any and all costs incurred by us in collecting any monies due. Interest shall accrue on a daily basis until payment is made and whether before or after any judgement; and/or
  - b) suspend the supply of the Technical Support Services until you have paid all outstanding sums (including any interest for late payment as may be applied from time to time).

## 7. Confidentiality

- 7.1. Each party undertakes to keep confidential all documentation or information which the other has provided to it (however recorded, preserved or disclosed) and which either by its nature is or is expressed to be confidential (including but without limitation information regarding its business, customers, suppliers, plans, operations, processes, product information, know-how, designs, trade secrets) (**Confidential Information**). You agree, if so requested by us, to enter into a separate confidentiality agreement with us.
- 7.2. This clause shall survive termination of the Contract for any reason.

## 8. Limitation of Liability

- 8.1. We warrant to you that:
  - a) the Technical Support Services will be performed with the reasonable skill and care in accordance with the standards that would be expected of a similar business with similar experience in providing such services; and
  - b) we will not infringe the intellectual property rights of any third party in performing the Technical Support Services.
- 8.2. You warrant that you have obtained and will maintain for the Term all permissions, licences and consents necessary (including but without limitation licences for the Products) for us to perform and for you to receive the Technical Support Services.
- 8.3. If, during the Term, we receive written notice from you of any breach by us of the warranties contained in clause 8.1 above, we shall, at own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate the Contract immediately on written notice to you and repay to you all sums which you have paid to us under the Contract during the Contract Year in which the termination occurs, less a charge for the Technical Support Services performed up to the date of termination. You shall provide all information reasonably necessary to enable us to comply with our obligations under this clause. This clause sets out your sole remedy and our entire liability for breach of clause 8.1.
- 8.4. All other conditions, warranties or other terms which might have effect between you and us or may be implied or incorporated into the Contract or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose.
- 8.5. You agree that, in entering into the Contract, either you did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in these terms and conditions or (if you did rely on any representations, whether written or oral, not expressly set out in these terms and

conditions) that you shall have no remedy in respect of such representations and (in either case) that we shall have no liability otherwise than pursuant to the express terms of these terms and conditions.

- 8.6. Our liability to you in respect of all claims arising out of or in connection with the Contract in any Contract Year (whether for breach of contract, negligence or any other tort, under statute or otherwise) is strictly limited to the Support Fees which you have paid to us for the Contract Year in which the claim arose.
- 8.7. Subject to clause 8.8 neither party will be liable to the other for:-
  - a) any loss (whether direct or indirect) of profits, revenue, business, goodwill or business opportunity;
  - b) any loss (whether direct or indirect) of data;
  - c) any indirect, special or consequential loss or damage.
- 8.8. Nothing will limit a party's liability for (a) death or personal injury caused by its negligence (b) for fraud or fraudulent misrepresentation or (c) for any matter for which it would be illegal to exclude, or attempt to exclude, our liability.

## 9. Force Majeure

- 9.1. We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by events outside our reasonable control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion, epidemic, lock outs, strikes or other labour disputes, civil commotion or national emergency (**Force Majeure Event**).
- 9.2. Our performance under the Contract is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Contract may be performed despite the Force Majeure Event.

## 10. Intellectual Property Rights

- 10.1. Any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites (**IPR**) in our documentation, information, data, software or inventions (**Our Material**) shall remain vested in us or our relevant licensors.
- 10.2. You acknowledge and agree that you shall not acquire or claim any title to any IPR in Our Material by virtue of the rights granted to you under the Contract; and to the extent that any rights in any of Our Material may vest in you by operation of law, you hereby assign such rights to us.

## 11. Termination

- 11.1. Each party shall have the right, without prejudice to its other rights and remedies, to terminate the Contract immediately by written notice to the other if the other:
  - a) is in material breach of any term of these terms and conditions and such breach is either incapable of remedy or is capable of remedy but the party in breach has failed to remedy it within thirty (30) days of receipt of a notice from the party not in breach requiring it to do so; or

- b) is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986) or becomes insolvent or bankrupt or enters into any kind of voluntary arrangement (whether individual or corporate) with its creditors (other than for the purpose of a bona fide reconstruction or amalgamation of the solvent party) or has an administration order made against it or commences to be wound up (otherwise than for the purposes of a bona fide reconstruction or amalgamation) or has a receiver appointed over all or any part of its undertaking or assets or undergoes any analogous event in any applicable jurisdiction or terminates or suspends its business activities.
- 11.2. Should we terminate the Contract before the end of any Contract Year or without giving you notice as envisaged by clause 3 because we have ceased to offer the Technical Support Services then our sole liability to you shall be to repay to you all sums which you have paid to us under the Contract during the Contract Year in which the termination occurs, less a charge for the Technical Support Services performed up to the date of termination.
- 11.3. Termination of the Contract by whatever means shall not affect any rights, obligations or liabilities of either party which have accrued before termination and/or which are intended to continue to have effect beyond termination.
- 11.4. Upon termination of the Contract (except where it is necessary to retain the same to exercise any rights granted under that Contract or by law which is intended to survive termination of the Contract):-
- a) each party shall promptly return to the other the Confidential Information owned by the other and destroy any electronic copies of the same;
  - b) you shall, at our request either return Our Material to us or destroy Our Material, held electronically or otherwise, and if destroyed, provide a certificate stating that it has been so destroyed.

## 12. Written Communications

- 12.1. Applicable laws require that some of the information or communications we send to you should be in writing. When using our site, you accept that communication with us will be mainly electronic. We will contact you by email or provide you with information by posting notices on our site. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing.

## 13. Miscellaneous

- 13.1. No term of the Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to it.
- 13.2. All notices given by you to us must be given to us in writing at the address shown in clause 1 or to [finance@dottedeyes.com](mailto:finance@dottedeyes.com). We may give notice to you at either the email or postal address you provide to us when placing an Order. Notice will be deemed received and properly 24 hours after an email is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case an email, that such email was sent to the specified email address of the addressee and that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the email is sent by post to the intended recipient.
- 13.3. The Contract constitutes the entire agreement between the parties relating to the provision of the Technical Support Services and supersedes any prior agreements, arrangements or undertakings made by the parties in relation to the same. No terms or



conditions endorsed upon, delivered with or contained in any purchase order or other document of yours shall form any part of the Contract.

- 13.4. You shall not assign, transfer or sub-contract or deal in any other manner with the Contract without our prior written consent.
- 13.5. You shall not during the Term and for the period of six (6) months thereafter employ, solicit or initiate or engage in discussions with the intent of soliciting, employing or otherwise engaging with any person who is or was an officer, employee or consultant of ours during this period.
- 13.6. The failure of either party at any time to enforce any provision of the Contract shall in no way affect its rights thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any sub provision or be a waiver of the provision itself. Any waiver, to be effective, must be in writing.
- 13.7. If any part of the Contract is found to be invalid or unenforceable by a court having jurisdiction over the matter, the invalid or unenforceable part of the provision shall be removed and shall not affect the validity of the rest of it.
- 13.8. Any amendment to the Contract must be in writing and signed by a duly authorised representative from each party.
- 13.9. The Contract shall be governed by and shall be construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.



## SCHEDULE 1 – TECHNICAL SUPPORT SERVICES

### Part 1 – Levels of Technical Support Services and their Coverage

1. There are three different levels of Technical Support Services available:
  - (a) Lite
  - (b) Standard
  - (c) Enterprise
2. Each level entitles the Customer to the following Technical Support Services during the Term:-

Option	Named Users	Maximum no. of Tickets pa
Lite	1	3
Standard	3	25
Enterprise	10	Unlimited

The Lite Technical Support Level allows one Named User to raise up to three Tickets during each Contract Year.

The Standard Technical Support Level allows three Named Users to collectively raise up to 25 Tickets during each Contract Year.

The Enterprise Technical Support Level allows ten Named Users to raise unlimited Tickets during each Contract Year.

3. A “**Ticket**” is each new query, relating to a single subject, irrespective of its duration. Tickets may be support in nature or management in nature. Tickets can only be raised by a Named User. Named Users are set out in the Order, or on the Named User Form which is made available to a customer upon acceptance of their Order.
4. Tickets must be raised using the online Technical Support Portal. Named users must log into the Portal to view responses.
5. Additional Tickets can be bought in blocks of 5 Tickets.
6. Unused Ticket entitlements, including any unused additional Tickets, will not be rolled over to subsequent Contract Years.
8. Standard and Enterprise customers may request amendments to the Named Users twice in a Contract Year by raising a Ticket.
9. Tickets can be logged online at any time. However, service levels set out in Part 2 of this Schedule shall only apply during our normal working hours from 9:00am to 5:00pm, Mondays to Fridays inclusive (but exclusive of Bank Holidays) (“**Support Hours**”).



10. Should we, for any reason, discontinue our relationship with a vendor whose product is supported under the Contract, then we will use reasonable endeavours to procure the right to maintain support of that product until the end of that Contract Year, at which time we will use reasonable efforts to assist you in finding an alternative source of support or we will recommend an alternative product to you.
11. The Technical Support Services only cover the selected Product releases listed on our site from time to time.
12. We shall endeavour to provide you with three months' prior notice in the event that we intend to cease to support a Product supported under the Contract.

## Part 2 - Service Levels

### 1. TECHNICAL SUPPORT PORTAL TICKET LOGGING

1. We will provide you with an online Technical Support Portal for the logging of Tickets.
2. Tickets logged through the Technical Support Portal will be automatically acknowledged by an email which includes a unique ticket identifier.
3. We will use reasonable endeavours to respond to the Ticket during the Support Hours within the target times detailed in Table 1 below ("**Response Times**"). Response Times are calculated in respect of Support Hours only.
4. Where the Ticket relates to a Product then that Ticket will be issued with a priority number from P1 (highest) to P3 (lowest) as detailed in Table 1 below.

**TABLE 1**

The timescales set out in this table shall be calculated in relation to the Support Hours only.

Priority	Definition	Response Time	Progress updates to customer  (no later than) :
<b>P1</b>	Problematic – Product failing on a regular basis or problems occurring within specific functions or facilities	Within 4 hours from time we have received the Ticket notifying us of the problem	Every 8 hours from receipt of all relevant information, unless otherwise agreed
<b>P2</b>	Non-Critical – Occasional Product failure or problems that can be worked around without undue difficulty or disruption to the	Within 4 hours from time we have received the Ticket notifying us of the problem	Every 8 hours from receipt of all relevant information, unless otherwise agreed



	Customer's business		
<b>P3</b>	Information – No particular disruption to Customer's business	Within 8 hours from the time we have received the Ticket notifying us of the problem	Every 16 hours from receipt of all relevant information, unless otherwise agreed

5. Where the Ticket relates to a Product then that Ticket will be issued with a priority number from P1 (highest) to P3 (lowest) as detailed in Table 1 below.
  - a. In the initial response to a ticket the Consultant will provide an estimated target resolution time.
  - b. The target resolution time may be altered in discussions between Dotted Eyes and the Customer from time to time. Such alterations shall be at the discretion of Dotted Eyes and dependant on the specific circumstances in question.

## 2. ESCALATION PROCESS

1. We will provide you with an online Technical Support Portal for the logging of Tickets.
2. Tickets passed back from Dotted Eyes to the Customer will cause the Response Time clock to be suspended. The clock is restarted when the ticket is passed back to Dotted Eyes by the Customer.
3. The Support Manager will use all reasonable endeavours to resolve the ticket before the next progress update is due. Should this target resolution time elapse without resolution of the ticket, the ticket will, if it is deemed in the reasonable opinion of the Support Manager to be necessary, or if reasonably requested by the Customer, be escalated to a Account Manager, who will decide, after discussions with the Customer, on the most appropriate course of action.
4. Should the ticket still not be resolved before the next progress update is due, the ticket will, if it is deemed in the reasonable opinion of the Account Manager to be necessary, or if reasonably requested by the Customer, be escalated to the Managing Director of Dotted Eyes.
5. Dotted Eyes has no obligation or liability under this Agreement to remedy any fault in a third party product it has supplied to the Customer where correction of that fault may be covered under any third party contract which the Customer could have put in place from such vendor, whether or not the Customer has in fact done so.



6. Alternatively Dotted Eyes may decide (in its discretion) that the ticket requires an on-site visit in order to be resolved. That on-site day may either be called off from the Customer's allocated pre-paid on-site days forming part of the services under this Agreement (if any), or may be ordered at the then current daily rate, through the Customer's usual supplier. If the site visit is required because of some act or omission of Dotted Eyes, and is not required because of some act or omission of the Customer, then the on-site day shall neither be drawn down from Dotted Eyes' pre-paid days, nor charged at the then current daily rate, but shall be provided without cost to the Customer, and whether or not this is the case shall be notified by Dotted Eyes to the Customer before Dotted Eyes attends the site.
7. The target response time for a site visit is 2 working days. If the site visit is to be carried out by the vendor's personnel then the response time will be governed by the vendor, and an additional charge may be levied if an appropriate hardware or software maintenance contract is not in place with the Customer. Those additional charges shall be the sole responsibility of the Customer.
8. Should an on site visit be carried out and the fault is found to have been caused by any act default or omission of the Customer, then a charge of up to one day's consultancy fee may be levied, or the Customer may elect to treat the on-site visit as being drawn down from the Customer's allocated pre-paid on-site days (if any).
9. Where a ticket has been actioned in accordance with the procedures set out in this Agreement, then the ticket will be closed by Dotted Eyes. When Dotted Eyes proposes to close a ticket, it will send an e-mail to the ticket holder informing them of that proposal. If the Customer does not reply to that e-mail within one Working Day objecting to the ticket being closed, then Dotted Eyes may close the ticket. If the Customer responds to that e-mail the ticket will remain open. If the Customer wishes to reopen a closed ticket he can do so at any time by replying to the e-mail with the ticket reference number in the subject header. Dotted Eyes and the Customer shall then discuss in good faith the further resolution of the ticket. Dotted Eyes reserves the right to close a ticket without the consent of the Customer in the following circumstances:
  - a. where the fault complained of is due to a bug identified within a Product, and for which no fix is currently available;
  - b. where a bug-fix or an upgrade is available in respect of a bug within a Product and Dotted Eyes has informed the Customer how it may be obtained;
  - c. where the fault complained of is caused by a conflict within the Customer's hardware and/or software;



- d. where no response has been received from the Customer for 10 Working Days following the last communication from Dotted Eyes.