

MERANT

**SUPPORTNET SERVICES AGREEMENT**

This SupportNet Services Agreement ("Agreement") sets forth the terms and conditions applicable to the provision by MERANT of maintenance and support services for the MERANT products separately licensed to you by MERANT (the "Maintained Software") and for which you have paid the applicable annual maintenance fee ("SupportNet Services"). All software, documentation and media provided to you under the terms and conditions of this Agreement are also subject to the terms and conditions of the applicable MERANT End User Software License Agreement relating to the Maintained Software.

1. **TERM AND TERMINATION:** This Agreement will become effective and SupportNet Services provided hereunder will commence when MERANT receives your order for SupportNet Services, and MERANT may terminate such SupportNet Services in the event your payment of the applicable annual maintenance fee for such order is not received within thirty (30) days of receipt of invoice. A minimum annual maintenance fee of \$250.00 shall apply to an order. Unless terminated earlier in accordance with the terms of this Agreement, the SupportNet Services provided hereunder will cease on the last day of the maintenance period which is twelve (12) months from the commencement of SupportNet Services under this Agreement. This Agreement may be terminated at any time upon fifteen (15) days written notice by either party to the other party by reason of any violation of any material terms and conditions of this Agreement.
  
2. **WHAT YOU RECEIVE AS A MERANT SUPPORTNET SERVICES CUSTOMER:** You will receive remote installation assistance and can report problems ("Defects") and receive fixes ("Corrections") for the then current release and the immediately prior release of the Maintained Software as provided in Item 3 herein. Defects are defined as defects in the distribution media or material differences between the operation of the Maintained Software and the description of the operation of the Maintained Software as provided in the applicable end-user documentation. Corrections include, but are not limited to, workarounds, support releases, update disks, correction disks, component replacements, patches and/or documentation changes, as MERANT deems appropriate.

**You will also receive:**

- a) SupportNet AnswerLine, a toll-free telephone support service providing access to SupportNet experts 24 hours a day and 7 days a week, excluding holidays.
- b) Internet or telephone reporting of Defects in the Maintained Software, and the ability to request the SupportNet staff to search their database for information on such reported Defects.
- c) A subscription to SupportNet Online, a global online service network which provides access to Knowledgebase, problem reporting, Corrections, tools and documentation.
- d) New releases and new versions of the Maintained Software which are made generally available under SupportNet Services, which for most products can be downloaded electronically for your immediate use from SupportNet Online.
- e) A subscription to MERANT Web newsletters containing technical tips and techniques.

- f) Access to SupportNet Community, a web-based community in which SupportNet customers share information with each other and with MERANT experts via e-mail notification, news groups and regional user groups.
3. **CORRECTIONS TO REPORTED DEFECTS:** Our SupportNet staff will, with your assistance in providing sufficient information and the minimum length source code sufficient for MERANT to reproduce the suspected Defect, investigate a suspected Defect in the then current release or immediately prior release of the Maintained Software by attempting to reproduce it. If the Defect is confirmed, MERANT will use reasonable efforts to provide a Correction in a future release. When provided under this Agreement, such Correction will be provided without additional charge. MERANT reserves the right to discontinue SupportNet Services without notice on a past Correction for any Maintained Software after you receive or are given access to a new release, new version or subsequent maintenance release of the Maintained Software containing that Correction is available.
4. **NEW RELEASES AND VERSIONS:** Provided that you have paid to MERANT any applicable annual maintenance fees, you will be entitled to receive from MERANT all new releases, new versions, Corrections, enhancements and improvements to the Maintained Software to the extent that the same are made generally available to other MERANT SupportNet customers at no additional charge. You shall be responsible for paying to MERANT all applicable taxes, duties, and shipping and handling charges.
5. **ADDITIONAL SERVICES AND CHARGES:** MERANT reserves the right, upon prior notice, to charge for services which are not the result of Defects in the Maintained Software. Examples of potentially billable services include:
- a) Debugging, application coding errors in a customer's application; and
  - b) Debugging problems in non-Maintained Software, or in combinations of Maintained Software and non-supported products, where the problem occurs in the non-supported product.
- MERANT may offer under separate agreements additional maintenance-related services, such as training and consulting. Such services can be performed at a site and time mutually agreeable. These services are normally charged on a time and materials basis plus expenses and are subject to availability.
6. **ITEMS NOT COVERED BY THIS AGREEMENT:** The following are excluded from the SupportNet Services:
- a) Altered or modified Maintained Software unless altered or modified pursuant to this Agreement;
  - b) Any combination of Maintained Software and other software not covered by this Agreement;
  - c) A release or version of Maintained Software for which maintenance services have been discontinued by MERANT;
  - d) A product release or version that has been withdrawn by MERANT from the market or is otherwise not generally available;
  - e) Defects caused by your negligence or fault;

- f) Defects resulting from hardware malfunction or malfunction of software not covered by this Agreement;
- g) Defects that do not significantly impair or affect the operation of the Maintained Software;
- h) Maintained Software used on an unsupported computer or operating system;
- i) Other software products sold separately by MERANT;
- j) Options, extensions, releases, versions, updates or upgrades to the Maintained Software sold separately by MERANT, unless generally made available to SupportNet customers for the applicable Maintained Software at no additional charge; and
- k) Charges associated with your accessing the internet.

**7. MAINTENANCE RENEWAL:** The first annual maintenance fee shall be paid in accordance with Item 1 above. Orders for renewal of maintenance must be placed within 30 days of each anniversary of the commencement of SupportNet Services. Approximately forty-five (45) days prior to the termination of the then current annual maintenance period, MERANT will provide notification of the renewal due date for SupportNet Services. The annual maintenance fee due for the next maintenance period shall be the then current applicable MERANT list price for the renewal of annual SupportNet Services as of the date of invoice or as specified in BPA N0010403-A-ZE78.

MERANT reserves the right to withdraw SupportNet Services on any or all Maintained Software, and to alter the prices, terms and conditions for the SupportNet Services in advance of any renewal of SupportNet Services. Any such withdrawal or alterations will amend this Agreement between you and MERANT as of such renewal date.

**8. MAINTENANCE RE-INSTATEMENT:** If you allow the SupportNet Services to expire, in order to reinstate SupportNet Services for a 12-month term for the applicable Maintained Software you must pay to MERANT:

- a) if you have the then current release of such Maintained Software, a fee equal to the then current annual maintenance fee for the applicable copy of the Maintained Software, plus the then current annual maintenance fee prorated for the period extending back to the date of expiration of SupportNet Services to bring the Maintained Software up to date with any new Corrections, enhancements and/or improvements thereto provided to SupportNet customers, plus an administrative fee of 20% of the then current license fee for the applicable Software Products; or
- b) if you do not have the then current release of such Maintained Software, a fee equal to the then current annual maintenance fee for the applicable copy of Maintained Software, plus the then current upgrade fee for the current release of the Maintained Software.

**9. EXCLUSION OF DAMAGES.** NEITHER MERANT NOR ANY OF ITS THIRD-PARTY SUPPLIERS SHALL BE LIABLE FOR ANY INJURY, LOSS OR DAMAGE, WHETHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL, ARISING OUT OF THE SUPPORTNET SERVICES OR THE USE OR INABILITY TO USE THE MAINTAINED SOFTWARE, INCLUDING WITHOUT LIMITATION LOST PROFITS, DATA OR

PROGRAMS, AND THE COST OF RECOVERING SUCH DATA OR PROGRAMS, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

10. **LIMITATION OF LIABILITY.** ANY LIABILITY OF MERANT SHALL BE LIMITED IN THE AGGREGATE TO THE AMOUNTS PAID BY YOU FOR THE APPLICABLE MAINTAINED SOFTWARE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS. THE LIMITATIONS OF LIABILITY DESCRIBED IN THIS SECTION ALSO APPLY TO ANY THIRD-PARTY SUPPLIER OF MATERIALS SUPPLIED TO YOU. MERANT AND ITS THIRD-PARTY SUPPLIER LIMITATIONS OF LIABILITY ARE NOT CUMULATIVE. THIS AGREEMENT, HOWEVER, SHALL NOT PURPORT TO EXCLUDE OR RESTRICT THE LIABILITY OF MERANT OR ITS THIRD-PARTY SUPPLIERS TO ANY EXTENT NOT PERMITTED BY LAW.
11. **OWNERSHIP.** MERANT and its third-party suppliers have and will retain all ownership rights to the Maintained Software, including all patent rights, copyrights, trademarks, service marks, related goodwill, and confidential and proprietary information relating thereto. You have no rights in the Maintained Software except as explicitly stated in this Agreement or the applicable MERANT End User Software License Agreement.
12. **MISCELLANEOUS:** You may not assign this Agreement to a third party without the prior written consent of MERANT. MERANT shall not be liable for failure or delay in performing its obligations due to circumstances outside its reasonable control ("Force Majeure"). Unless otherwise agreed in writing by the parties, this Agreement and the applicable MERANT End User Software License are the only agreements between MERANT and you with respect to the Maintained Software. These Agreements supersede all prior agreements, oral or written, relating to the Maintained Software. This Agreement will be governed by the Federal Contract laws of the United States to the extent applicable. In all other respects; if you acquired the Maintained Software in North America this Agreement is governed by the laws of the state of Oregon, if you acquired the Maintained Software in France, Germany or Japan, this Agreement is governed by the laws of the country in which you acquired the Maintained Software, and in the rest of the world, this Agreement is governed by the laws of England and is subject to the exclusive jurisdiction of the English courts. This Agreement may be performed by and/or assigned to the MERANT company or third party which MERANT allocates from time to time to provide such SupportNet Services to customers in your country.
13. **SUPPORTNET CONTACTS:** For all products: Phone: 1-800-443-1601, option 3
14. **SUPPORTNET SALES CONTACT:** For All Products: Phone: 1-800- 443-1601, opt. 6.