

Software Support Agreement for ENCO Professional Audio Automation and Delivery Software

All Software Maintenance and Support is provided subject to the following Standard Terms and Conditions. These provisions set forth are only obligations of The Useful Media Company Limited (Special Media Projects) and ENCO Systems INC (ENCO) regarding Software Maintenance and Support. For purposes of this Agreement, The Useful Media Company Limited (Special Media Projects) are the UK support agents for ENCO, any reference to ENCO as a company equally relates to The Useful Media Company Limited (Special Media Projects). "You" or "Your" shall refer to the entity entitled to receive Maintenance and Support hereunder.

I. The Useful Media Company Limited (Special Media Projects) SOFTWARE MAINTENANCE SERVICES:

1. Use of The Useful Media Company's email and telephone support to receive technical assistance and/or general consultation with regard to software You have licensed from ENCO and for which You have elected to receive Support (the "Covered Software").
2. As they become available, and where applicable ENCO will provide new versions, updates and/or enhancements to current versions of the Covered Software. Some new versions, updates and/or enhancements may require more advanced or larger capacity equipment and/or third party software. Equipment and software compatibility shall be Your sole responsibility.
3. As they become available, ENCO will provide updates and enhancements to existing documentation.
4. ENCO will take all reasonable steps to correct defects in the Covered Software that are directly attributable to programming if ENCO, in its sole discretion, recognises them as having a materially detrimental effect on the performance of the Covered Software.
5. ENCO will take all reasonable steps to have data anomalies repaired and data loss in the Covered Software directly attributable to programming minimised. This provision is subject to Your performance of scheduled data backups using a prudent method of media rotation.
6. All hardware must meet the minimum requirements as laid out by ENCO Systems INC, available online or by contacting your support agent. Processors including but not limited to Celeron and AMD are not supported by ENCO Systems INC or its agents.

Software Support Terms And Conditions

The Useful Media Company Limited : 1 Fulmar Close : Southampton : Hampshire : SO16 8EZ

Registered in England and Wales 7795173

Rev 15th November 2017

II. CHARGES

1. The Maintenance period begins on the date shown at the top of this document for the duration shown except in the case of rolling agreements where the support renews at the end of the 12 month anniversary, or as defined by the date of the first support invoice sent.
2. The initial Annual Maintenance fee is based upon The Useful Media Company's current support list price of the Covered Software. Renewal fees are calculated annually for a 1-year period and may be subject to an inflationary adjustment on the anniversary of the agreement after each 12 month period. If You purchase additional Software or licensed users for such Software, these additions will automatically be subject to Maintenance fees and will be invoiced accordingly. Charges for any partial month of coverage will be prorated on the basis of a thirty (30) day month to coincide with existing Maintenance term.
3. All charges for software support are payable in advance. Failure to give at least ninety (90) days notice of intention not to renew the Maintenance contract at the 12 month anniversary will result in automatic renewal and you will be liable for an additional terms charges. Notwithstanding this, if You fail to pay any invoice within thirty (30) days of the invoice date, The Useful Media Company LTD may withhold services until payment has been received.
4. Charges do not include charges related to third party software programs, which may be required to run the Covered Software. You may be required to pay separately for any upgrades in such third party programs.
5. The Useful Media Company Limited (Special Media Projects) reserves the right to charge late fees on overdue accounts.
6. Entitled support hours are 9am to 5pm Monday to Friday, excluding bank holidays and public holidays. Support outside of these hours, via telephone, email or otherwise will be charged at our standard out of hours support rates of £165 per hour (£235 per hour for on-site out of hours).
7. On-site visits are not included in the support package. On-site visits for supported clients are charged at £165 per hour plus expenses.

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STANDARD TERMS AND CONDITIONS FOR SOFTWARE MAINTENANCE AND SUPPORT FROM THE USEFUL MEDIA COMPANY LIMITED (SPECIAL MEDIA PROJECTS) [REVISION: 15th November 2017 – this document supersedes any other terms and conditions]

III. EXCLUSIONS FROM ENCO SOFTWARE MAINTENANCE SERVICE

The following is expressly excluded from the terms of this Agreement:

1. Provision, installation and/or support of new versions and/or enhancements to current versions of non-ENCO software. Non-ENCO software includes but shall not be limited to, operating system software, other audio software, word processing, spreadsheet, reporting and/or database software.
2. Installation of updates and enhancements to ENCO software (only at our sole discretion will we carry out updates on your behalf. You will be notified of new releases your system is capable of running via email).
3. Upgrading any hardware, disc space and memory on the system on which You use the Covered Software.
4. If You are using ENCO products that require a common database, You must remain current on Maintenance for all products for as long as the Covered Software is in use in order to assure the integrity of Your Covered Software. Cancellation of Maintenance on any one system may cause incompatibilities with related products, and performance of all Covered Software could be adversely affected.
5. Repair of the Covered Software and data if ENCO determines the failure is related to:
 - (a) the equipment or supplies You are using.
 - (b) misuse or neglect of the covered Software including, but not limited to, failure to carry out housekeeping as directed, failure to perform scheduled data backups using a prudent method of media rotation.
 - (c) anyone other than a member of The Useful Media Company Limited staff making any alteration to the Covered Software or to the system files which may affect the Covered Software.
 - (d) environmental conditions, including, but not limited to, insufficient, excessive, or irregular electrical power, failure of air conditioning, excessive heat or humidity, flood, water, wind or lightning.
 - (e) use of the Covered Software for purposes other than those which it was expressly designed.
 - (f) the relocation or reinstallation of the Covered Software or the hardware on which it is installed.
 - (g) the use of any software on the system other than the Covered Software.
6. The Useful Media Company Limited reserves the right to charge additional support fees at its standard rates for services performed in connection with reported incidents that are later determined to have been due to user error, hardware or software not supplied or supported by the Useful Media Company. Notwithstanding the foregoing, The Useful Media Company has no obligation to perform support services in connection with issues resulting from hardware or software not supplied by ENCO or The Useful Media Company Limited.

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7. General operation of the software and/or training which is covered in the help/instruction guide available from within the software. We reserve the right to charge a per hour rate of £165 per hour for support, changes or other work already detailed in the ENCO help guide.

8. User level programming, including but no limited to, clock and playlist creation, cut and meta data changes, database management, command cut creation, other user or station programming operations. We reserve the right to charge a per hour rate of £165 per hour for additional programming services, changes or other work already detailed in the ENCO help guide.

IV. SOFTWARE MODIFICATIONS

Any modifications that You make to the Software, including any modifications to any third party licensed software included with or embedded in the Software, will render any Maintenance or Warranty obligations contained in this Agreement null and void. ENCO will not be liable, in any respect, for any such modifications or any errors, losses or damage resulting from such modifications. ENCO has no other responsibilities with respect to Maintenance other than those specified in this Section and will not be responsible for maintaining other than the most current, unaltered release of the Software.

V. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

1. NO WARRANTIES: ENCO AND/OR THE USEFUL MEDIA COMPANY LIMITED DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS OBTAINED BY YOU IN USING THE SOFTWARE, THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. THE SOFTWARE IS LICENSED "AS IS" AND THE MAINTENANCE SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. ENCO EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE AND SERVICES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2. LIMITATION OF LIABILITY. IN NO EVENT WILL ENCO AND/OR THE USEFUL MEDIA COMPANY LIMITED BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE DELIVERY OF MAINTENANCE SERVICES OR ANY DELAY IN DELIVERY OF THE MAINTENANCE SERVICES. ENCO'S MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER FORM OF LIABILITY) FOR DAMAGES OR LOSS, HOWSOEVER ARISING OR CAUSED, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE RELEVANT SERVICES GIVING RISE TO THE LIABILITY.

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VI. GENERAL

1. Delivery of any Software Maintenance service to You by ENCO and/or The Useful media Company Limited is subject to conditions beyond the control of ENCO or its agents, including but not limited to, Acts of God, acts of any public enemy, fire, flood, epidemic or quarantine restrictions, strikes, riots or civil commotion, freight or other embargoes, weather conditions or any failures by ENCO's subcontractors or suppliers.
2. You may not sub-license, sell, rent, lend or lease any portion of the Covered Software. You may not translate or create derivative works based on the Covered Software.
3. You may cancel Maintenance by giving notice at least 90 days notice in advance of the annual period renewal date (except in cases where an agreement for a 24 month period is in place where such notice date shall be 90 days before the end of the 12 month term). Cancellations will become effective on the renewal date. No credit will be given for partial Maintenance periods. If You allow your Maintenance coverage to lapse, You may purchase telephone and/or email support for currently supported software versions on an as-needed basis. Telephone and/or email support is billed at £165 per hour during UK office hours and £195 per hour at all other times, with a minimum charge of one hour.
4. Reinstatement of lapsed Maintenance will require full payment of Maintenance fees that would have been due from the expiration of the last active Maintenance period through the reinstatement date, plus 15%. Payment of the applicable amount for the current Maintenance period will be due upon reinstatement. This reinstatement policy applies if Maintenance has been cancelled or there is otherwise a lapse in Maintenance coverage, such as for non-payment of fees. Upon reinstatement, You will receive the latest version of the software (that the existing hardware is capable of supporting).
5. At the end of the term shown, the agreement will automatically re-new for a further period of the same length.
6. If You choose not to install the latest version of the Covered Software (or where your hardware can not run the latest version), ENCO and/or The Useful Media Company Limited reserves the right to limit the scope of the Maintenance services provided.
7. ENCO and/or The Useful Media Company limited may end support services, sub-contract or otherwise instruct agents to work on their behalf at any time.

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