

TETware

LICENSE, SUPPORT AND MAINTENANCE AGREEMENT

between

THE *Open* GROUP

and

TETware License, Support and Maintenance Agreement

THIS AGREEMENT is made the _____ day of _____ 200_____

BETWEEN:

- (1) **X/Open Company Limited**, trading as The Open Group, with a registered office at Thames Tower, 37-45 Station Road, Reading, Berkshire RG1 1LX, England ("The Open Group"); and
- (2) _____ with an office at _____

("the Customer").

1. DEFINITIONS

In this Agreement the following words shall have the following meanings unless the context requires otherwise:

- 1.1 "Avoidance Procedure"
An Avoidance Procedure is an instruction which provides a temporary measure to operationally avoid an identified TETware problem.
- 1.2 "Documentation Correction"
A Documentation Correction resolves errors or ambiguities in the supporting documentation for TETware.
- 1.3 "Maintenance Updates"
A Maintenance Update incorporates validated problem resolutions and from time to time functionality enhancements, and is a revision of TETware.
- 1.4 "TETware Support Subscribers"
The group of companies holding current TETware Support and Maintenance contracts with The Open Group.
- 1.5 "Nominated Contact(s)"
The e-mail contact(s) specified in Annex 1 to this agreement.
- 1.6 "Person"
Includes a body of persons whether or not incorporated.

The parties hereby AGREE as follows:

2. LICENSE

In consideration for the fee payable under clause 4 below, The Open Group hereby grants to the Customer, and the Customer hereby accepts the right to use the software described in Annex 1 hereto ("TETware") on the terms of the license set out in Annex 2 hereto ("the License").

3. SUPPORT SERVICES

In consideration of the fee payable under Clause 4 below, The Open Group will provide the support services described in this Clause 3 as follows:

3.1 Error Report Service

The Nominated Contacts of the Customer are entitled to submit Error Reports by electronic mail to The Open Group using the pro forma provided within TETware for this purpose. The Open Group will use all reasonable endeavors to obtain resolution to verified problems.

3.2 Enhancements

The Open Group will review and evaluate all requests for the enhancement of TETware as candidates for possible inclusion in future releases of TETware, such evaluation being subject to review and prioritization by the TETware Support Subscribers. The Open Group will acknowledge such requests, but shall be under no obligation to implement any specific request.

3.3 Problem Correction

The Open Group will endeavor to obtain correction to verified problems on a timely basis. The response to a problem may be an Avoidance Procedure, Documentation Correction or Maintenance Update.

3.4 Distribution

Maintenance Updates will be provided by electronic distribution.

4. FEES

The fee as defined in Annex 1 will be due and payable on execution of this Agreement. The software will not be made available until payment is received. The fees for the second and subsequent years shall be due on the anniversary of the date of this Agreement. Fees shall be paid free of all deductions, together with any taxes due at the rate then in force.

One month prior to the expiry of this Agreement, the Customer will be informed of any variations in the fees in force for the next year.

5. TERM

The initial term of this Agreement shall be for twelve (12) months. Support services will automatically renew for additional 12-month periods unless terminated at the end of the initial support period or at the end of any subsequent support year upon at least one (1) month's prior written notice to The Open Group. In the event of such termination the rights and obligations of the Customer under Clause 2 shall continue.

Resumption of support after such a termination shall be conditional upon payment to The Open Group of the support fees, which would otherwise have been due for the period during which support was suspended.

6. CUSTOMER'S RESPONSIBILITIES

The Customer agrees to use its reasonable endeavors to ensure that Error Reports are only submitted for genuine, reproducible errors or faults with TETware.

7. THE OPEN GROUP'S RESPONSIBILITIES

The Open Group shall:

- 7.1 Provide electronic mail responses to Error Report(s), with a normal response time of five clear working days or less.
- 7.2 Where it considers it necessary, and subject to agreement by the Customer, The Open Group may provide on site support for which The Open Group reserves the right to charge on a time and materials basis.
- 7.3 From time to time distribute Maintenance Updates and Documentation Corrections to the Customer.

8. TERMINATION

- 8.1 In the event that The Open Group is in material breach of its obligations hereunder and has failed to remedy such breach within 30 days of a request by the Customer to do so, the Customer may terminate this Agreement. The Customer shall not be entitled to any refund of fees paid in respect of the unexpired period of support or license.
- 8.2 In the event that the Customer fails to make payment in accordance with Clause 4, The Open Group may, without prejudice to any other remedy it may have, suspend the support services and thereafter terminate this Agreement (including the License).
- 8.3 The Open Group shall have the right to terminate this Agreement by reason of the Customer's bankruptcy, insolvency or if any proceedings are instituted for the winding up or dissolution of the Customer, or if the Customer does not comply with any of the terms and conditions contained herein.
- 8.4 Written notice shall include completion of the Termination Certificate in Annex 4 and forwarding to The Open Group. Termination is complete only when confirmed by The Open Group.

9. INDEMNIFICATION

The Open Group will not be liable to the Customer or to any third party as a result of any delay in furnishing or failure to furnish service hereunder. In the event that any service performed by The Open Group is unsatisfactory The Open Group's sole liability shall be to re-perform such service. The Customer acknowledges and agrees that such limitation of liability, without limiting the generality of the foregoing, extends to loss of data, profit, actual or anticipated revenue, loss due to failure of TETware and/or damage to business reputation.

IN ANY EVENT THE OPEN GROUP WILL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES.

10. EXCLUSIONS

- 10.1 The support service does not include telephone support.
- 10.2 The support service does not cover support requests arising from: (i) abuse, misuse, modification or mishandling of TETware; (ii) damage due to forces external to TETware including, but not limited to, the following: Acts of God, flooding, power failures, transportation, faulty communication lines, etc., or any other causes beyond the control of The Open Group. The Customer agrees to pay The Open Group's standard charges for service calls covering such cases.
- 10.3 The Open Group will not provide support services in respect of modifications of TETware performed by the Customer.

11. GENERAL

- 11.1 All original material, including but not limited to TETware, prepared for or jointly with the Customer pursuant to this Agreement, shall belong to and be the property of The Open Group.
- 11.2 The Open Group is not accountable for any changes in computer hardware or software requirements, or for any changes that may be necessary to Customer's software or application programs as a result of an Avoidance Procedure, Maintenance Update or Documentation Correction.
- 11.3 Certain enhancements may, in The Open Group's opinion, be so significant as to create a new product. The Customer may elect to purchase a license or upgrade package for the new product, and include any upgrade for the remaining period of this Agreement.
- 11.4 This Agreement is made under English law and the parties submit to the non-exclusive jurisdiction of the English courts.

12. SPECIAL TERMS AND CONDITIONS

Under this agreement, The Open Group shall also provide the Customer with those benefits as set forth in Annex 3 attached hereto.

13. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter of this Agreement and supersedes all prior oral or written undertakings, understandings or arrangements between them relating to such subject. The parties acknowledge the provisions of this Agreement are reasonable and that they are not relying on any agreement, understanding, arrangement, warranty, representation, term or condition which is not set out in this Agreement. No change may be made to the provisions of this Agreement except in writing signed by duly authorized representatives of both parties.

AGREED by the parties through their authorized signatories:

Signed for and on behalf of
The Customer

Signed for and on behalf of
The Open Group

Signature _____

Signature _____

Name _____

Name _____

Title _____

Title _____

Email _____

Email _____

Date _____

Date _____

ANNEX 1
to
TETware License, Support and Maintenance Agreement

Description of the licensed, supported and maintained software products:

TETware Version 3.7 and subsequent releases

TETware Version & Fees:
Please tick all applicable.

- TETware Lite - \$6,500
- Distributed TETware - \$12,500
- TETware RT - \$6,500
- We require Binary Redistribution Rights (*tick if Yes*)

TETware GUI Version & Fees:
Please tick all applicable.

- TETware GUI bytecode (made available by default)
- TETware GUI source, no redistribution rights - \$6,500
- TETware GUI source and binary redistribution rights - \$12,500

Fees are payable in advance of the software being made available.

Commencement Date: The date of last signature on the previous page.

Contact # 1 (The primary point of contact)

Name:	E-mail:
Phone:	Fax:
Street:	
City:	State:
Zip (Post) Code:	Country:

Contact # 2

Name:	E-mail:
Phone:	Fax:
Street:	
City:	State:
Zip (Post) Code:	Country:

ANNEX 2
to
TETware License, Support and Maintenance Agreement

*****TETware END USER LICENSE*****

BY DOWNLOADING THIS PRODUCT, YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT INSTALL THE PRODUCT.

TETware RELEASE 3 END USER LICENSE
REDISTRIBUTION NOT PERMITTED

This Agreement has two parts, applicable to the distributions as follows:

- (A) Free binary evaluation copies - valid for 45 days, full functionality - no warranty,
- (B) Free binary restricted versions - no warranty, limited functionality
- (C) Licensed versions - full functionality, warranty fitness as described in documentation, includes source, binary & annual support.

**PART I (A & B above) -- TERMS APPLICABLE WHEN LICENSE FEES NOT (YET) PAID
(LIMITED TO EVALUATION, EDUCATIONAL AND NON-PROFIT USE)**

GRANT.

The Open Group grants you a non-exclusive license to use the Software free of charge if (a) you are a student, faculty member or staff member of an educational institution (K-12, junior college, college or library) or an employee of an organization which meets The Open Group's criteria for a charitable non-profit organization; or (b) your use of the Software is for the purpose of evaluating whether to purchase an ongoing license to the Software. The evaluation period for use by or on behalf of a commercial entity is limited to 90 days; evaluation use by others is not subject to this 90 day limit. Government agencies (other than public libraries) are not considered educational or charitable non-profit organizations for purposes of this Agreement. If you are using the Software free of charge, you are not entitled to hard-copy documentation, support or telephone assistance. If you fit within the description above, you may use the Software for any purpose and without fee.

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PART II (C above) -- TERMS APPLICABLE WHEN LICENSE FEES PAID

GRANT.

Subject to payment of applicable license fees, The Open Group grants to you a non-exclusive license to use the Software and accompanying documentation ("Documentation") as described below.

Copyright (c) 1996, 1997, 1998, 1999 X/Open Company Ltd.
Copyright (c) 2000, 2001, 2002, 2003 The Open Group.

LIMITED WARRANTY.

The Open Group warrants that for a period of ninety (90) days from the date of acquisition, the Software, if operated as directed, will substantially achieve the functionality described in the Documentation. The Open Group does not warrant, however, that your use of the Software will be uninterrupted or that the operation of the Software will be error-free or secure.

SCOPE OF GRANT.

Permission to use for any purpose is hereby granted.

Modification of the source is permitted.

Redistribution of the source code is not permitted without express written permission of The Open Group. Distribution of sources containing adaptations is expressly prohibited.

Redistribution of binaries or binary products containing TETware code is permitted subject to the distributor meeting the following requirements :

- this copyright notice is included unchanged with any binary distribution
- the distributor notifies The Open Group
- an annual TET support agreement is in effect with The Open Group for the period the product is being sold, or a one off binary distribution fee equal to four years annual support is paid.

Modifications sent to the authors are humbly accepted and it is their prerogative to make the modifications official.

Portions of this work contain code derived from other versions of the Test Environment Toolkit, which are copyright

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Copyright 1993 UNIX System Laboratories, Inc., a subsidiary of Novell Inc.

Copyright 1994,1995 UniSoft Ltd.

Copyright 2000, 2001, 2002, 2003 The Open Group.

The unmodified source code of those works is freely available from ftp.opengroup.org. The modified code contained in TETware restricts the usage of that code as per this license.

ANNEX 3
to
TETware License, Support and Maintenance Agreement

In exchange for the fee, The Open Group shall provide the following benefits to the Customer:

1. A Java GUI (provided in Java byte code) which provides for ease of use and incorporates additional functionality, including database access
2. Access to maintenance releases at least six months before non-subscribers
(the supported release is TETware 3.7 and later)
3. Increased Platform support - the WIN 32 version is only available to TETware Support Customers
4. A native Java API
5. A report writer
6. Priority bug reporting and repair via a dedicated alias
7. Access to on-line TETware information available on the world wide web and by FTP
8. Binary distribution rights
9. Ability to designate 2 support contacts
10. A discount on TETware Training Courses
11. Publication of the names of organizations that sponsored the support of TETware by subscribing to the support services

ANNEX 4
to
TETware License, Support And Maintenance Agreement
TERMINATION CERTIFICATE

We no longer require TETware Support.

- We confirm that we are no longer distributing binaries derived from TETware sources.
- We have never distributed binaries derived from TETware sources.

(Please tick relevant statement.)

Signed by an authorized representative, for and on behalf of

(Please print your organization's name)

Signed _____

Name _____
(Please print)

Title _____

Date _____