

# Snapshot EFB Annual Software Maintenance and Support Terms and Conditions

The following terms and conditions shall govern the delivery of Support Services and Software Upgrades ("**Maintenance**") by System Five Pty Ltd ABN 90 072 588 384 ("**System 5**") resident in the Sydney, NSW, Australia to the paid up registered customer ("**Customer**") ordering the standard annual maintenance for Snapshot Enterprise File Backup Software ("**Snapshot EFB**"). This document is version 2.2 of 24 Jan 2002.

## 1. **Maintenance**

- a) Subject to the terms and conditions set forth herein, **System 5** will provide the **Customer** with 12 months Software updates and Email support upon each annual payment of 20% of current RRP on **Snapshot EFB** purchased.
- b) **Maintenance** commences on the date the **Snapshot EFB** was invoiced to the customer or the customers supplier by **System 5** and is renewable annually on the 12 month anniversary.
- c) **Snapshot EFB** updates are available for download directly from <http://snapshot.sysV.com> and are usually made available at least every 3 months.
- d) To be in effect the maintenance is activated ("Registered") by the issue of a license with a serial number and activation key by **System 5** to the **Customer**.
- e) The **Customer** will be provided with support only for a maximum of two (2) named technical support contacts. Support Services will be delivered by a member of **System 5's** technical support team to the Technical Support Contacts via email and/or telephone.
- f) All problem reports need to be logged via email to [support@sysV.com](mailto:support@sysV.com) with Customer contact number and **Snapshot EFB** Serial Number.
- g) For telephonic support **System 5** will require remote access via the Internet to the Customer backup equipment else only an email reply will apply.

## 2. **Restrictions.**

- a) **System 5** may limit or terminate the maintenance being provided if **Customer** uses the maintenance in an abusive or fraudulent manner, as determined by **System 5** in its reasonable discretion. Examples of such use include a high number of calls 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.
- b) Resale, assignment, or transfer of Support Services is strictly prohibited and will be grounds for termination of the Support Terms.
- c) A maximum of 10 incidents per **Snapshot EFB** Serial number/License may be logged per annum at the discretion of **System 5**.

## 3. **Exclusions.**

**System 5** shall not be required to provide any **Maintenance** 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; or (iv) versions of **Snapshot EFB** other than the most recent version (e.g., 5.1.1z), provided that **System 5** shall also not be required to provide any **Maintenance** for Software that are no longer listed on the Support Site as supported products.

#### 4. Term and Termination.

- a) **System 5** shall provide the above **Maintenance** under these Support Terms for a term of one (1) year from **System 5's** receipt and acceptance of **Customer's** order of Support Services "**Commencement Date**". These Support Terms will automatically renew for subsequent year's terms unless one party provides other party with written notice of its desire not to renew at least thirty (30) days before the end of the then-current term. If neither party provides the other party with such written notice of non-renewal, an invoice for the Annual Support Fee (as defined below) will be sent to **Customer** by **System 5**. If these Support Terms lapse, **Customer** may be subject to additional fees prior to the reinstatement of Support Services hereunder.
- b) The term "Annual Support Fee" as used in these Support Terms means, (i) for the Initial Term, the Annual Support Fee set forth on the applicable purchasing document ("Initial Annual Support Fee"); (ii) for each of the first and second renewal terms, if so renewed, the Initial Annual Support Fee; and (iii) for each of the third and subsequent renewal terms, if so renewed, the then-current list price of the Support Services, however, in no event shall the amount be less than the Annual Support Fee paid for the prior year for the Software covered by this renewal.
- c) Notwithstanding anything to the contrary herein, these Support Terms may be terminated by **System 5** for failure of **Customer** to pay **System 5** the Annual Support Fee if such failure to pay continues for ten (10) days after **System 5** gives **Customer** written notice of such failure. **System 5** may also terminate these Support Terms if **Customer** materially breaches the terms of these Support Terms and fails to cure such breach within thirty (30) days of written notice thereof, except that a material breach of any license granted to **Customer** in the terms of use or end user license agreement applicable to **Snapshot EFB** shall be grounds for immediate termination.
- d) The **Customer** acknowledges that **System 5** has the right to discontinue the manufacture and development of any of the Software and the Support Services for any Software, including without limitation the distribution of older Software versions, at any time in its sole discretion, provided that **System 5** agrees not to discontinue the Support Services for the Software during the current annual term of these Support Terms, subject to the termination provisions herein. **System 5** reserves the right to alter these Support Services from time to time, using reasonable discretion but in no event shall such alterations result in (i) diminished support from the level of support set forth herein; (ii) materially diminished obligations for **System 5**; (iii) materially diminished rights of **Customer**, or (iv) higher Annual Support Fees during the then-current term. **System 5** shall provide **Customer** with sixty (60) days prior written notice of any material changes to these Support Services contemplated herein.

5. **Warranty and Disclaimer.** **System 5** will use commercially reasonable efforts to provide the Support Services in a professional manner, but **System 5** 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 **Snapshot EFB Software Agreement** or any other agreement under which **Customer** has obtained the Software. 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, **System 5** 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. **System 5** SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL **System 5**'s LIABILITY ARISING FROM OR RELATED TO THESE SUPPORT TERMS EXCEED THE AMOUNTS PAID BY **CUSTOMER** FOR THE SUPPORT SERVICES ORDERED BY **CUSTOMER** FOR THE ANNUAL TERM IN WHICH THE LIABILITY AROSE. IN NO EVENT SHALL **System 5** HAS ANY LIABILITY FOR ANY SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE OF EQUIPMENT OR FACILITIES, OR INTERRUPTION OF BUSINESS, ARISING FROM OR RELATED THE SUPPORT TERMS UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT **System 5** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
7. **General.** These Support Terms may not be assigned by **Customer**. Any assignment in violation of the foregoing shall be null and void. Any additional services added to these Support Terms by written notice to **Customer** will be governed by the terms of these Support Terms. These Support Terms supersede all other written and oral proposals, purchase orders, prior agreements, and other communications between **Customer** and **System 5** concerning the subject matter hereof and constitutes the entire agreement between **System 5** and **Customer** regarding provision of Support Services. These Support Terms shall be governed by the laws of New South Wales, Australia for all disputes relating to this contract. Sections 5, 6 and 7 shall survive expiration or earlier termination of these Support Terms for any reason.