

# EzeScan + Application Suite Annual Software Maintenance Agreement

- 1. EzeScan Licensing conditions are detailed in the separate EzeScan Licence Agreement, which will be sent to the Customer with the EzeScan Software (the "Software"). Please refer to that document for licensing and licence use related matters.
- 2. EzeScan Maintenance Services are sold on an annual basis, payable up front with the initial product order. The Maintenance Services apply to only those modules purchased by the Customer. The Maintenance Agreement may be renewed annually by payment of the Annual Renewal Fee as detailed in this Agreement. The Annual Renewal Fee shall be invoiced by Outback Imaging to the Customer on the anniversary of this Agreement each year. The Customer shall pay such invoice within thirty days of its receipt. Failure to pay the Annual Renewal Fee by the due date will result in Outback Imaging suspending the Maintenance Services.
- **3.** EzeScan Maintenance Services will not be delivered to Customers whose monies have not yet been remitted to Outback Imaging UK Limited or its authorised distributor or agent.
- **4.** EzeScan Maintenance Services fee must be paid in full before any Maintenance Services are provided by Outback Imaging UK Limited.
- 5. EzeScan Maintenance Service fees must be applied to all licences and modules owned by the Customer.
- 6. Maintenance Service Requests:
  - (a) EzeScan Maintenance Services are available between the hours of 8.30am 5.00pm (GMT), Monday - Friday, excluding public holidays.
  - (b) All service requests must be logged via the online service desk: <u>https://ezescan.atlassian.net/servicedesk</u>
  - (c) Service requests are processed on a first in first out basis.

# 7. Maintenance Services

- 7.1 Providing the Customer has complied with the terms of this Agreement, Outback Imaging shall provide Maintenance Services for:
  - (a) The current Release of the Software for the term of this Agreement,
  - (b) The Preceding Release of the Software for a period ending on the shorter of the term of this Agreement or twelve (12) months after the date the Current Release is made available,
  - (c) Outback Imaging may, at its absolute discretion, elect whether or not to provide Support Services for Software which has been modified in any way.
- 7.2 The Customer shall designate a primary IT Administrator and a secondary IT Administrator to conduct all communication with Outback Imaging with respect to the Maintenance Services. Outback Imaging is not obligated to deal directly with other representatives of the Customer.
- 7.3 The Customer shall ensure Outback Imaging has sufficient access to the Software, any systems in which the Software is used, and any relevant records or documentation to provide the Maintenance Services. Failure to provide complete remote access may impede the successful delivery of support and maintenance.

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- 7.4 The provision of Maintenance Services by Outback Imaging is limited to correcting program defects, correcting program non-conformance with documented features, and making minor user interface modifications to make the GUI easier to use.
- 7.5 Maintenance Services requests will be logged by Outback Imaging as a SPAR (System Problem Action Request). Outback Imaging will assign one of the four following SPAR levels to the Customer Maintenance Service request:

## (a) "Severity level 1" or "SPAR 1" - Critical Problem

Description: A feature does not work as documented and the impact of the problem is severe for the Customer, and no work around is currently available. This would normally require a rapid repair fix to be provided by Outback Imaging.

## (b) "Severity level 2" or "SPAR 2" - Urgent Problem

Description: A feature does not work as documented and the impact of the problem is serious but not severe. This includes situations where the Customer is able to continue using the Software but with some restrictions resulting in degradation of major services/operations. This would normally require a workaround to be provided by Outback Imaging, followed by a rapid repair fix rolled into the next product minor release update.

## (c) "Severity level 3" or "SPAR 3" - Normal Problem

Description: Minor defect with work around available. This includes situations of documentation errors, which caused mistakes in the operation of the Software. The Customer is able to continue using the software without degradation of major services /operations. Documentation errors are normally corrected in the next product minor release update.

# (d) "Severity level 4" or "SPAR 4" - Minor Problem

Description: The documentation contains an error, or there is a trivial defect with little or no operational impact, or Customer has a general question regarding product usage, which does not require immediate attention. Documentation errors are normally corrected in the next product minor release update.

7.6 In response to Maintenance Service requests the Customer may be required to use either a workaround provided by Outback Imaging, or to install a rapid repair fix supplied by Outback Imaging to correct the problem. It is the Customer's responsibility to implement the workaround, or rapid repair fix as per the instructions provided by Outback Imaging onto their copy of the licensed Software.

# 8. Maintenance Service Exclusions

- 8.1 Product training or retraining is not included as part of the Maintenance Services. These additional services may however be purchased at additional cost, subject to Outback Imaging's standard prices from time to time.
- 8.2 EzeScan software installation, reinstallation, configuration or reconfiguration is not included as part of the Maintenance Services. These additional services may however be purchased in addition to the Maintenance Services. If the Customer requires new functionality in one of the EzeScan + Application suite modules, they can raise a Software Enhancement Request (SER) with Outback Imaging. The decision to implement the changes required in response to an SER is solely at Outback Imaging's discretion. Outback Imaging will charge a service fee for implementing the new functionality requested in an SER.



- 8.3 Onsite assistance is not included as part of the Maintenance Services. These additional services may however be purchased at additional cost, subject to Outback Imaging's standard prices from time to time.
- 8.4 Extended service hours outside of 8.30am 5.00pm (GMT) are not included as part of the Maintenance Services. These additional services may however be purchased at additional cost, subject to Outback Imaging's standard prices from time to time.
- 8.5 The following additional services may also be purchased at additional cost to the Customer, subject to Outback Imaging's standard prices from time to time:
  - (a) Provision of any services whatsoever to any other products that are not specifically included within the licensed EzeScan application suite modules,
  - (b) "How to use" requests.
- 8.6 All fees for additional services shall be payable by the Customer within thirty days of receipt of Outback Imaging's invoice.

# 9. <u>Warranty</u>

- 9.1 Outback Imaging warrants to the Customer that the Maintenance Services will be performed:
  - i. in accordance with all applicable laws and regulations; and
  - ii. with all reasonable skill and care.
- 9.2 If, during the term of this Agreement, Outback Imaging receives written notice from the Customer of any breach by Outback Imaging of the warranties contained in clause 9.1, Outback Imaging shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this Agreement immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to Outback Imaging under this Agreement during the year in which the termination occurs, less a charge for the Maintenance Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable Outback Imaging to comply with its obligations under this clause 9.2. This clause sets out the Customer's sole remedy and Outback Imaging's entire liability for breach of clause 9.1.
- 9.3 No representation or warranty is given by Outback Imaging that all faults will be fixed or will be fixed within a specified period of time.
- 9.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

# 10. Liability and Indemnity

- 10.1 Except as expressly stated in clause 10.2:
  - (a) Outback Imaging shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
    - i. special damage, even though Outback Imaging was aware of the circumstances in which such special damage could arise;

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- ii. loss of profits;
- iii. loss of anticipated savings;
- iv. loss of business opportunity;
- v. loss of or goodwill;
- vi. loss of, or damage to (including corruption of) data.

Provided that this clause 10.1(a) shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 10.1(c) or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 10.1 (a);

- (b) the Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) Outback Imaging shall have no liability otherwise than in accordance with the express terms of this Agreement; and
- (c) the total liability of Outback Imaging, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract, shall in no circumstances exceed a sum equal to 100 percent (100%) of the fees payable by the Customer for the Maintenance Services in the calendar year in which the liability arises.
- 10.2 The exclusions in clause 9.4 and clause 10.1 shall apply to the fullest extent permissible at law but Outback Imaging does not exclude liability for:
  - (a) death or personal injury caused by the negligence of Outback Imaging, its officers, employees, contractors or agents;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 Supply of the Goods and Services Act 1982; or
  - (d) any other liability which cannot be excluded by law.
- 10.3 The Customer acknowledges that:
  - (a) it is exclusively responsible for:
    - i. ensuring that the staff of the Customer are trained in the proper use and operation of the Software;
    - ii. ensuring the security, completeness and accuracy of all inputs and outputs;
    - iii. making regular backup copies of its data to ensure recovery of its data if the Software malfunctions; and
    - iv. the selection, use of and results obtained from any other programs, equipment, materials or services used in conjunction with the Software.
  - (b) the level of the fees for the Maintenance Services reflects the allocation of risk between the parties set out in clause 8 and clause 9; and
  - (c) it is in a better position than Outback Imaging to assess and manage its risk in relation to use of the Software.
- 10.4 All dates supplied by Outback Imaging for the provision of Services shall be treated as approximate only. Outback Imaging shall not be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 10.5 All references to Outback Imaging in this clause 10 shall, for the purposes of this clause only, be treated as including all employees, subcontractors and suppliers of Outback Imaging, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause.

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- 10.6 The Customer shall at all times indemnify and hold harmless Outback Imaging and its officers, employees and agents ("those indemnified") from and against any loss, expenses or liability reasonably incurred or suffered by any of those indemnified arising from:
  - (a) a breach by the Customer of its obligations under this Agreement; or
  - (b) any wilful, unlawful or negligent act or omission of the Customer.

## 11. <u>No Liability for Damages</u>

In **no** event shall Outback Imaging or its suppliers be liable for any consequential, incidental, direct, indirect, special, punitive or other damages whatsoever (including but not limited to damages for loss of business profits or contracts, loss of business information, loss of goodwill, loss of data, business interruption, or any other pecuniary loss) arising out of the Customer's use of or inability to use the Software, even if Outback Imaging has been advised of the possibility of such damages. Nothing in this Agreement shall limit Outback Imaging's liability for death or personal injury caused by its negligence or for fraud ulent misrepresentation.

## 12. Termination

- 12.1 Outback Imaging may terminate this Agreement immediately by providing the Customer with written notice if the Customer:
  - (a) is in breach of any term of this Agreement and such breach is not remedied within 14 days of receipt of a written notice from Outback Imaging setting out details of the breach;
  - (b) destroys or disposes of or loses custody of the Software;
  - (c) becomes or threatens to become insolvent; or
  - (d) being a natural persons dies.
- 12.2 In terminating the Agreement under clause 12.1 Outback Imaging will
  - (a) cease providing the Support Services;
  - (b) be regarded as discharged from any further obligations under this Agreement; and
  - (c) pursue any additional or alternative remedies provided by law.

#### 13. Variation, Assignment and Severability

- 13.1 Only a Director of Outback Imaging, in conjunction with the Customer, shall be entitled (in writing) to vary the terms and conditions of this Agreement.
- 13.2 Outback Imaging may transfer, assign, charge, sub-contract or otherwise dispose of this Agreement, or any of its rights or obligations arising under it, at any time during the term of the Agreement.
- 13.3 The rights and obligations of the Customer as specified in this Agreement are personal. They cannot be assigned, charged or otherwise dealt with, and the Customer shall not attempt to do so without the prior written consent of Outback Imaging.
- 13.4 Where this Agreement relates to more than one item of Software these terms and conditions shall apply separately to each item of Software. Any provision of these Agreements, which is prohibited or unenforceable, will be ineffective only to the extent of that prohibition or unenforceability. The prohibition or unenforceability will not invalidate the remaining provisions of this Agreement.



## 14. Entire Agreement

These terms and conditions supersede all prior written and oral understandings between the parties on the subject matter of this Agreement and constitute the entire agreement between them relating to the licence of the Software. There are no understandings or representations, express or implied, not expressly set out herein.

### 15. Applicable Law

This Agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and submitted to the non-exclusive jurisdiction of the English courts.

Customer
Signed: (By an authorised representative of the Customer)
Full Name:
Company/Entity Name:
Company/Entity Address:
Dated:
Outback Imaging UK Limited
Signed:(By a person authorised by Outback Imaging)
Full Name:
Dated:

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