

Crossware Mail Signature™ Software Maintenance and Support Agreement – (Version 2.3 APR09)

This agreement only applies to Crossware Mail Signature™ for Lotus Notes®.

1. Terms

1.1 Unless otherwise expressly agreed between Crossware Limited ("Crossware") and a customer ("customer" or "you") this Agreement will apply to the provision of maintenance and support services ("Maintenance and Support") for the Crossware Mail Signature for Lotus Notes software ("Crossware Mail Signature"). Maintenance and support is not provided for Lotus Notes or Lotus Domino and you must separately purchase such services in relation to those applications from the third party supplier.

1.2 This Agreement does not apply to any other services provided by Crossware to the customer from time to time.

1.3 Crossware may modify or amend this Agreement from time to time and any changes will be effective from the time they are posted on Crossware's website or are otherwise notified to you. Your continued use of Crossware Mail Signature and the Maintenance and Support will be deemed acceptance by you on these changes.

1.4 No variation of the terms of this Agreement will be binding on Crossware unless agreed to in writing by Crossware.

2. Content of Services

2.1 Maintenance and Support Services

Crossware shall provide the following Maintenance and Support for the products licensed by the customer:

- Provision of known error corrections by delivery of available patches via electronic communication and for download via the Internet (www.crossware.co.nz).
- Provision of available minor updates (bundling of several error corrections in one version, including patches and fixes) for download via the Internet (www.crossware.co.nz).
- Provision and/or of available medium upgrades (new releases of the same version with additional / enhanced functions) for download via the Internet (www.crossware.co.nz).
- Provision of available major upgrades (new version upgrade with substantially enhanced volume of functions).
- Information via electronic communication (email) when new minor, medium and or major updates are available.
- Response to technical questions posted via email during Crossware's normal business hours in accordance with clause 2.2.

The Maintenance and Support listed in this clause 2.1 relate only to Crossware Mail Signature in its current version and previous release of the current version.

The granting of rights of use and the delivery of any supplemental code as part of any minor, medium and major updates or upgrades shall form part of the Crossware Mail Signature and be governed by the terms of the Crossware Mail Signature license including any restrictions on the number of users.

2.2 Email Support

For the term of this Agreement, Crossware shall provide support via email in the following manner: Queries for specific technical problems and failures are possible at any

time. For this purpose, the customer will email Crossware with a description of the problem and a classification in the following priority and error levels:

- Level A: System does not work.
- Level B: System works with limited functions.
- Level C: System basically working. Just errors/problems with specific functions.

Crossware will use its reasonable endeavours to respond within the following response times (via e-mail):

- Level A: Response within the next working day
- Level B: Response within two working days.
- Level C: Response within three working days.

Working day is considered as Monday - Friday, 9 a.m. until 5 p.m. local time. Exclusively applicable is the local time at the office of Crossware, which are the time zone of New Zealand. Exclusively applicable regarding holidays are the legal holidays at the office of Crossware.

2.3 Exclusions

The Maintenance and Support provided under this Agreement exclude the following:

- (a) the correction of errors or defects in Crossware Mail Signature caused by operation of Crossware Mail Signature in a manner other than that specified or intended by Crossware;
- (b) the correction of errors or defects in Crossware Mail Signature caused by any modification, revision, variation, translation, or alteration of Crossware Mail Signature not authorised by Crossware;
- (c) the correction of errors or defects in Crossware Mail Signature caused by the use of computer programs not approved by Crossware;
- (d) the correction of errors or defects in Crossware Mail Signature caused by the failure of the customer to provide suitably qualified and adequately trained staff for the operation of Crossware Mail Signature;
- (e) the rectification of defects or errors in Crossware Mail Signature caused by a fault in the equipment on which Crossware Mail Signature operates;
- (f) the diagnosis or rectification of faults not associated with Crossware Mail Signature;
- (g) the correction of defects or errors in Crossware Mail Signature arising directly or indirectly out of the Customer's failure to comply with this Agreement, or any other agreement between the parties relating to Crossware Mail Signature; or
- (h) on-site support at the customer's premises.

2.4 Updates and New Releases

If you refuse to accept an update or new release of Crossware Mail Signature, Crossware may, subject to clause 2.1, decline to continue providing the Maintenance and Support.

2.5 No assurances

Due to the complex nature of hardware and software applications, networks and specific configurations with a customer, Crossware cannot guarantee the resolution of any error, i.e. despite Crossware's best efforts it is possible that certain errors cannot be rectified by the provision of Maintenance and Support under this Agreement

2.6 Payments

You must pay the current applicable Maintenance and Support charges plus any applicable taxes annually in advance. Failure to pay these charges may result in the

suspension or termination of Maintenance and Support. If this Agreement is terminated for any reason whatsoever, and you wish to subsequently enter into a new Maintenance and Support agreement with Crossware, Crossware shall be entitled to charge a reinstatement fee, plus any applicable taxes.

3. Securing of Services

3.1 Customer Cooperation

To guarantee the best level of efficiency, the customer commits itself to describe the problems as exactly and detailed as possible. Especially all the questions referring to the failure should be answered as accurate as possible. Only the compliance with this obligation to cooperate as an essential contractual performance will enable the provision of all support services in a timely and due manner. You may be required to provide Crossware with a documented example of the defect or error before any Maintenance and Support are provided.

3.2 Limitation / Exclusion of Liability

Crossware, its employees, contractors, agents and servants will have no liability to you in respect of any actions, claims, demands, proceedings, costs, expenses, damages, losses or other liabilities or any kind (direct, indirect, consequential or otherwise) caused or contributed to by any act or omission of Crossware or arising directly or indirectly in relation to the Maintenance and Support.

3.3 If for any reason the exclusion of liability in clause 3.2 of this Agreement cannot be relied upon by Crossware or any other party referred to in that clause, then the maximum combined liability of Crossware and those persons will be limited at Crossware's sole discretion to:

- (a) Supplying the services again; or
- (b) 10% of the total amount actually received by Crossware in respect of charges for Maintenance and Support in the 12 month period immediately preceding the month in which the liability arises.

3.4 In addition, in no event does Crossware authorize you or anyone else to use Crossware Mail Signature in applications or systems where Crossware Mail Signature's failure to perform can reasonably be expected to result in a significant physical injury, or in loss of property, or loss of life. Any such use is entirely at your own risk, and you agree to hold Crossware, its affiliates or licensors harmless from any and all claims or losses relating to such unauthorized use.

3.5 Copyright

Crossware is entitled to the copyright as well as the proprietary rights, rights of use and commercialization resulting thereunder to all the materials capable of being protected under copyright, which materials are provided in connection with the Maintenance and Support under this Agreement. The granting of rights is made exclusively in the form agreed upon in the license agreement. Any infringements of copyright shall be prosecuted by Crossware in terms of both civil and criminal law.

4. Performance of the Agreement

4.1 Commencement and Termination

This Agreement comes into force with the acceptance of Crossware Mail Signature Maintenance and Support Agreement by the customer. The initial term is one year and commences on the date noted in the invoice from Crossware. Termination at the end of the initial or any subsequent term is possible by giving three months' prior notice in writing to take effect by the end of the respective period. In the absence of termination in due time, the Agreement shall be renewed for further one year's periods each time at Crossware's then current Maintenance and Support charge.

4.2 Termination for Good Cause

Crossware may terminate the Maintenance and Support and this Agreement immediately if:

- (a) the Crossware Mail Signature License is terminated, however caused;
- (b) you have not paid any applicable Maintenance and Support charges; or
- (c) you breach any of the terms of this Agreement.

4.3 On suspension or termination of the Maintenance and Support and/or this Agreement, you will not be entitled to any refund or credit for any Maintenance and Support charges paid in advance.

5. General Provisions

5.1 Interpretation of the Agreement

If any of the provisions of this Agreement should be or become invalid, ineffective or unenforceable, that will not affect the effectiveness of the remaining provisions. The same applies to omissions in individual provisions and/or parts of these General Terms and Conditions of Business. In such a case the parties shall replace the cancelled or incomplete provision by another, legally effective provision meeting the purpose of the cancelled provision to the largest extent possible.

5.2 This Agreement is the complete statement of the agreement between the parties on the subject matter, and merges and supersedes all other or prior understandings, purchase orders, agreements, and arrangements.

5.3 There are no third-party beneficiaries of any promises, obligations, or representations made by Crossware herein.

5.4 Any waiver by Crossware of any violation of the Agreement by you shall not constitute, nor contribute to, a waiver by Crossware of any other or future violation by you of the same provision, or any other provision, of this Agreement.

5.5 Crossware may transfer or assign any of the rights and obligations under this Agreement to third parties at any time and is entitled to use agents for fulfilment of Crossware's contractual obligations.

5.6 If any part of this Agreement or the application thereof to any person or circumstance is for any reason held invalid or unenforceable, it shall be deemed severable, and the validity of the remainder of this Agreement, or the applications of such provision to other persons or circumstances, shall not be affected thereby.

5.7 Except as otherwise expressly mandated by the relevant law in your jurisdiction, this Agreement shall be governed by, and construed in accordance with, the substantive laws of New Zealand, whose courts shall have non-exclusive jurisdiction over all disputes which may arise in respect of this Agreement.