Deploy Stick Support Agreement

This is a Deploy Stick Support Agreement ("Agreement") between Customer and Twocanoes.

By clicking on the "accept" button, Customer is consenting to be legally bound by and are becoming a party to this Agreement with Twocanoes. If Customer does not agree to all of the terms of this Agreement, click the "disagree" button. In addition to and apart from clicking "accept," payment of the applicable Support Service Fees and receipt by Twocanoes of those Support Service Fees will constitute Customer's acceptance of the terms of this Agreement.

1. Definitions

1.1. Documentation means any specifications, such as technical or other specifications, or documentation that Twocanoes may make available to Customer regarding or for use with the Software.

1.2. Software means the software (including source code and object code) data, files, and other materials provided or made available by Twocanoes for use in creating resources needed to automate the install of operating systems and software packages on Apple computers, which is currently commonly referred to as Deploy Stick or Mac Deploy Stick or MDS.

1.3. Support Hours are generally 9 am to 5 pm central time, Monday through Friday, excluding holidays.

1.4. Support Time means the sum total of the hours or fractions of hours one or more persons affiliated with Twocanoes spend in providing Support Services to a Customer under this Agreement.

1.5. Support Request means a request by the Customer for Support Services under this Agreement.

1.6. Support Period means a one year period starting upon payment of the Support Service Fee and acceptance of this Agreement and any subsequent renewal periods.

1.7. Support Services means the provision of technical support, technical assistance, technical guidance, and/or bug fixes, available under the purchased Level of Service, under this Agreement.

1.8. Service Fees means the fees for Support Services under this Agreement specified in a Twocanoes invoice or checkout webpage or screen.

1.9. Customer means the person, entity, or company who is entering to this Agreement. If you are entering into this Agreement on behalf of Customer company, educational institution, or other entity, you represent and warrant that you have full legal authority to bind Customer company, educational institution, or other entity to this Agreement and Customer also refers to Customer company, educational institution, or entity. If you do not have the requisite authority, you may not accept this Agreement or use the Support Services.

1.10. Twocanoes means Twocanoes Software, Inc., an Illinois Corporation, having a place of business at 34 W. Chicago Avenue, Naperville, IL 60540.

2. **Service**

2.1. **Support Services.** Subject to the terms of this Agreement, Twocanoes will, during the Support Period, provide Customer with Support Services for the Software during Support Hours at the applicable Level of Service purchased by the Customer.

2.2. **Level of Service** means the support service level purchased by the Customer. There are the following Levels of Service:

2.2.1.**Basic.** Under the Basic Level of Service, Twocanoes will respond to up to two Support Requests per month ("Basic Support Limit"). Twocanoes will initially respond to a Support Request within the Basic Support Limit within three business days. This does not guarantee that the issue for which support was requested will be resolved within three business days. However, Twocanoes is committed to resolving the support issue in a timely fashion. If the identified issue will not be resolved within three business days, Twocanoes will communicate an estimated timeline for resolution.

2.2.2.**Premium.** Under the Premium Level of Service, Twocanoes will respond to up to five Support Requests per calendar month ("Premium Support Limit"). Twocanoes will initially respond to a Support Request within the Premium Support Limit within one business day. This does not guarantee that the issue for which support was requested will be resolved within one business day. However, Twocanoes is committed to resolving the support issue in a timely fashion. If the identified issue will not be resolved within one business day, Twocanoes will communicate an estimated timeline for resolution. In addition, Twocanoes will provide the following additional support, under the Premium Level of Service, when requested by the Customer in a Support Request, so long as it is within the Premium Support Limit:

2.2.2.1. *Deployment Assistance and Support.* Twocanoes will be available for a pre-deployment plan phone call with customer or customer's representative of up to one hour. During the call Twocanoes will discuss a deployment plan with the customer and will offer practices and/or suggestions for deployment plan appropriate for the customer's circumstances. Twocanoes will also be available to provide up to 8 hours of Support Time for issues rising during the customer's testing and deployment using the Software.

2.2.2.2. *Software Customization.* Twocanoes will provide up to 8 hours of Support Time to add additional related features to software features for the purpose of streamlining and optimizing customer deployments and authentication.

2.2.2.3. *Software Support.* Twocanoes will provide up to 8 hours of Support Time to add additional related features to the Software for the purpose of streamlining and optimizing customer workflows.

2.2.2.4. *Documentation.* Twocanoes will provide up to 8 hours of Support Time to review and comment on customer developed documentation before, during, or after deployment.

2.3. **Customer Responsibilities**

2.3.1. Customer will provide Twocanoes with all information, access, and participation by Customer reasonably requested by Twocanoes to respond to the Support Request and enable Twocanoes to provide Support Services.

2.3.2. Customer will promptly report problems with the Software to Twocanoes.

2.3.3. Customer will promptly implement and deploy solutions provided by Twocanoes. The Customer may need to upgrade to the newest or a newer version of the Software in order to resolve or partially resolve an issue raised in a Support Request.

2.3.4. Customer is responsible for backing up the data on the computers where the Software is used. The Customer should ensure such a backup is complete before or at the time a Support Request is made.

2.3.5. Customer is responsible for maintaining equipment, software, and services to access and use the Software, such as Arduino hardware, computers, operating systems, and network access. Support Services do not include repair of defective hardware, including Arduino hardware.

2.4. **Exclusions**

2.4.1. Support Services do not cover problems caused by: (a) misuse, (b) abuse, (c) neglect, (d) accident, (e) causes other than ordinary use, (f) user or third party customization or modification of the Software or the code thereof (g), improper installation of the Software not in accordance with the Documentation, or (h) third party software.

2.4.2. If Customer has not paid the applicable Service Fees or is not in compliance with this Agreement, Twocanoes is not obligated to provide Support Services.

2.4.3. The Software is not to be used for nuclear activities, chemical or biological weapons, or missile projects or where the deployment failure could lead to death, personal injury, property damage or environmental damage. Therefore, Support Services do not cover problems with the Software when the Software is used in such situations.

2.5. **Intellectual Property.** Any suggestion, idea, improvement, customization, change, or additional functionality or feature suggested, provided, or made by Customer to Twocanoes for the Software or Arduino firmware in connection with a Support Request ("Improvement") will be owned by Twocanoes. Customer hereby assigns all of Customer's right, title, and interest in any Improvement to Twocanoes and agrees to execute all reasonable documents necessary or advisable to perfect such ownership in the Improvement to Twocanoes.

3. **Fees**

3.1. Service Fees are due on the Effective Date. In the case of renewal, Service Fees are due by the beginning of the renewal period or as otherwise provided on the applicable invoice or checkout webpage.

3.2. Except as otherwise stated herein, Service Fees are non-refundable.

3.3. Service Fees do not include any taxes or similar that may imposed, required, or levied by any unit of government by reason of the services under this Agreement. The payment of such taxes or similar, if any, shall be the obligation of the Customer.

4. **Term**

4.1. This Agreement takes effect upon the first of (1) Customer clicking on the "accept" button or (2) payment of the applicable Support Service Fees and receipt by Twocanoes of those Support Service Fees will constitute Customer acceptance of the terms of this Agreement ("Effective Date"). This agreement will terminate one year from the Effective Date. This Agreement may be renewed upon a renewal offer by Twocanoes and acceptance and payment of the then existing Support Service Fees by Customer.

4.2. Customer may terminate this Agreement at any time by providing written notice to Twocanoes. The Service Fees paid are nonrefundable.

4.3. Twocanoes may at any time terminate this Agreement with Customer if: (a) Customer fails to comply with any term of this Agreement, including the timely payment of Support Fees; or (b) Twocanoes is required by law to do so.

4.4. Twocanoes may, within 60 days notice of Customer, terminate this Agreement if Twocanoes decides to no longer support the Software or a version of the Software.

4.5. Notwithstanding any termination of this Agreement, the provisions of this agreement that are intended to survive, will survive the termination of this Agreement, including the provisions of section 6 through 9.

5. **Modifications**

5.1. Twocanoes can modify this Agreement upon 30 days written notice to Customer. The subsequent request for Support Services after receipt of written notice by Customer will be deemed acceptance of the modification. This Agreement shall not be modified by any purchase order or acknowledgement by Customer.

6. **WARRANTIES AND DISCLAIMER OF WARRANTIES**

6.1. Twocanoes warrants the Support Services will be provided professionally within industry standards for software support.

6.2. Customer shall notify Twocanoes of any defects or deficiencies in the Support Services within 30 days of when the defective or deficient Support Service were provided.

6.3. Twocanoes does not warrant that the Software will operate uninterrupted or error-free. The Software may contain errors that could cause failures or loss of data. Twocanoes does not warrant that Twocanoes will correct all errors in the Software or that the Software will be compatible with future Twocanoes or Apple products or software.

6.4. Written or oral advice provided by Twocanoes does not create a warranty.

6.5. TO THE FULLEST EXTENT PERMITTED BY LAW, THE WARRANTY OF SECTION 6.1 IS THE EXCLUSIVE WARRANTY, AND TWOCANOES DISCLAIMS

ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATIONS THE WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, TIMELINESS, AND NON- INFRINGEMENT OF THIRD-PARTY RIGHTS, regardless of whether Twocanoes knows or had reason to know of Customers' particular needs.

6.6. If Customer requests Arduino flashing under section 2.2.3.5, then Customer warrants that Customer has all rights necessary for Twocanoes to flash any customer-provided Arduino firmware on Arduino units and Customer hereby grants and provides to Twocanoes all such rights necessary for Twocanoes to flash any customer-provided custom Arduino firmware on Arduino units for the Customer.

6.7. If Customer requests Arduino customization, software customization/support, or package customization, or other improvement to the Software or firmware, then Customer warrants that Customer has all rights necessary for Twocanoes to carry out and implement such request.

7. LIMITATION OF LIABILITY

7.1. **Twocanoes' complete and entire liability for any breach of a warranty under section 6.1 shall be only:** (a) correcting errors in the Software that cause the breach or if Twocanoes cannot substantially correct the errors upon the application of reasonable effort the Customer may terminate this Agreement and receive a prorated portion of the unused Service Fees paid to Twocanoes for the then existing Service Period, or (b) having the Support Services that are asserted to be deficient performed again.

7.2. Except to the extent provided in section 7.1 for breach of section 6.1 warranty, to the fullest extent permitted by law, **Customer agrees that Twocanoes, its subsidiaries, its affiliates, and their respective officers, employees, agents, and independent contractors shall not be liable to Customer for** any direct, incidental, consequential, special, exemplary, indirect, or punitive damages of any kind, including but not limited to, damages for loss of data, goodwill, profits, attorney's fees or other intangible losses or personal injury, even if Twocanoes had been advised of the possibility of such loss or damages or any claim by a third party, arising out of or in any way related to this Agreement or the Support Services.

8. Indemnification

8.1. To the maximum extent permitted by law, Customer agrees to indemnify, defend and hold harmless Twocanoes, its subsidiaries, its affiliates, and their respective officers, employees, agents, and independent contractors (each is an "Indemnified Party") from all losses, liabilities, claims, damages, expenses and costs, including attorneys' fees and court costs (collectively "Losses") incurred by an Indemnified Party as a result of (a) Customer's breach or non-compliance of this Agreement, (b) a customization, modification, feature, packaging, or development request or customer-provided firmware made or provided under subsections section 2.2.3.1 to 2.2.3.6, and (c) any claims any install package created with the Software violates or infringes any third party intellectual property rights or defames any person or violates their rights of publicity or privacy.

8.2. The Software is not intended for use application, deployments, or situations, where (i) inaccuracies or errors in the information, data or content provided by the Software is important, or (ii) Software or deployment failure could lead to death, personal injury, property damage or environmental damage. Customer agree to indemnify, defend and hold harmless each Indemnified Party from any Losses incurred by such Indemnified Party by reason of any such use.

9. **General**

   9.1. Choice of Law and Forum. This Agreement will be governed by the laws of the State of Illinois in the United States of America, without regard to its choice of law rules. Any action to enforce this agreement shall be brought in a court of competent jurisdiction located in DuPage County, Illinois or in the United States District Court for the Northern District of Illinois, Eastern Division.

   9.2. Severability. If any provision of this Agreement is held to be legally invalid, illegal or unenforceable the remaining provisions shall nevertheless remain in full force and effect.

   9.3. No Waiver. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

   9.4. **Merger and Integration.** This written Agreement is the exclusive agreement between Customer and Twocanoes concerning the support services covered by this Agreement and supersedes and merges any and all prior oral or written agreements, negotiations or other dealings between the parties concerning such support services.

   9.5. **Titles and Headings**. The Section headings in this Agreement have no legal or contractual effect and are only for convenience.

   9.6. Notice to Customer. Twocanoes may provide Customer with notice related to this Agreement or the Software via the email address or other contact information Customer provides to Twocanoes.

   9.7. Notice to Twocanoes. Customer can provide Twocanoes notice under this Agreement by email at support@twocanoes.com.

Updated May 15, 2023