



SUPPORT TERMS

These *Support Terms* supplement the *General Terms* when Customer is acquiring Support Services under an Order. Capitalized terms that are not defined in context shall have the meanings set forth in Section 1 of the *General Terms*.

1. SUPPORT SERVICES GENERALLY. If Customer is enrolled in a Provider Support Services plan and has paid applicable Support Services fees or has paid applicable subscription fees under a Subscription License, then for each Software Product covered by the Support Services plan to the extent included in it or licensed under a Subscription License Provider shall owe to Customer, depending on the relevant Order, all, or a combination of, the following obligations as applicable to the specific Support Services plan purchased by Customer:

- a. Defect correction.** in response to reports from Customer that a Provider Software Product does not conform in material respects with its Documentation, exercise commercially reasonable efforts to reproduce and remedy the nonconformance. If a nonconformance in a Provider Software Product is materially affecting Customer's ability to operate its business and Customer notifies Provider of this fact, Provider will address the nonconformance with an effort that is commensurate with the extent to which the error affects Customer's ability to operate its business using the Priority Levels detailed in Section 1.1 below;
- b. Maintenance.** make available to Customer new releases of Provider Software Products made generally available to Provider's other customers, provided, however, that Provider reserves that right to charge additional license fees for new releases of Provider Software Products that provide substantial new functionality or that incorporate new third-party components; and
- c. Help Desk.** During the support hours indicated on an Order (or if none stated the hours indicated on Provider's website), make Support Services personnel available to answer operational questions and to accept reports of any nonconformance.

1.1 PRIORITY LEVELS AND RESPONSE TIMES. Customer may log Support Services requests via telephone or e-mail provided or published by Provider, or via Provider's customer portal where Customer may also view the status of Support Service requests. Unless otherwise agreed, upon Provider's receipt of a Support Service request, Provider will evaluate the reported issue and assign and work to resolve the reported issues based on the following priority level definitions:

Priority 1: Critical Business Impact – Highest Priority

- (a) Priority 1 shall mean a nonconformance that renders the Software Product inoperable and causes a significant, time-dependent stoppage of Customer's business operations.
- (b) Priority 1 Errors must be reported via telephone.
- (c) Provider will use commercially reasonable efforts to acknowledge Priority 1 tickets within 1 hour of the initial contact via telephone and commence providing resolution or workaround.
- (d) Provider will use commercially reasonable efforts to comply with the following target time in 90% of Priority 1 instances: Provide resolution or workaround within four (4) hours from Customer reporting the Priority 1 issue.

Priority 2: Significant Business Impact – High Priority

- (a) Priority 2 shall mean a nonconformance that causes the Software to fail resulting in significant revenue or operational impact on Customer's business, although certain functions of Customer's business remain in operation.
- (b) Priority 2 Errors must be reported via telephone.
- (c) Provider will use commercially reasonable efforts to acknowledge Priority 2 tickets within 1 hour of the initial contact via telephone and to manage the ticket in Provider's high priority queue until a satisfactory workaround or resolution has been provided.
- (d) Provider will use commercially reasonable efforts to comply with the following target time in 90% of Priority 2 instances: Provide resolution or workaround within eight (8) hours from Customer reporting the Priority 2 issue.

Priority 3: Low Impact Failure – Medium Priority

- (a) Priority 3 shall mean a nonconformance which causes a feature of the Software to fail resulting in a non-critical situation which allows the Customer's business to remain in operation. A Priority 3 failure may include issues only impacting a limited number of users or issues where the business impact under a Priority 1 or Priority 2 is resolved, but there is ongoing research needed to determine the root cause of the failure.
- (b) Provider will use commercially reasonable efforts to acknowledge Priority 3 tickets within 24 hours of the initial contact and to comply with the following target time in 80% of Priority 3 instances: Provide resolution for the issue within 30 days or as otherwise agreed upon by the Customer.

Priority 4: Assistance – Low Priority

- (a) Priority 4 shall mean tickets opened when Customer has general software questions or needs that do not impact day-to-day functionality.

- (b) Provider shall use commercially reasonable efforts to acknowledge Priority 4 tickets within 48 hours of the initial contact and to either provide an answer within 45 days or provide resolution in the next Software Release of the Software if appropriate.

1.2 ADDITIONAL SUPPORT TERMS – CUSTOMERS WITH NO CLOUD SERVICES.

- a. In the event Provider intends to withdraw Support Services for a Provider Software Product licensed by Customer, Provider will notify Customer at least twelve (12) months in advance.
- b. Provider will provide Support Services for the most current version of each Provider Software Product licensed by Customer under a Perpetual License and the immediately preceding version.
- c. Customer will:
 - (i) install and maintain any hardware and software necessary to permit Provider remote Internet access to Customer's system for the purpose of problem diagnosis, delivery corrections, and monitoring compliance;
 - (ii) maintain adequate and current back-up copies of software, Customer Data and configuration information as necessary to ensure that a failure of a Software Product will not have a materially negative impact on Customer's business operations;
 - (iii) provide to Provider such back-up copies of software, Customer Data and configuration information as requested by Provider to perform Support Services for Customer;

1.3 ADDITIONAL SUPPORT TERMS - CUSTOMERS WITH CLOUD SERVICES.

- a. In the event Provider intends to withdraw Support Services for a Provider Software Product licensed by Customer under a Subscription License, Provider will not withdraw support until expiration of, and will provide notice to Customer at least six months prior to, the expiration of Customer's current Subscription term; and
- b. During the Subscription term, provider will provide Support Services for the version of each Provider Software Product licensed by Customer under a Subscription License and provided to Customer via Provider's Cloud Services. Customer understands and agrees that it must maintain an applicable Support Services plan (and be current in the payment of applicable fees) in order to receive Support Services during any period under which Provider is providing Cloud Services.

2. CUSTOMER RESPONSIBILITIES GENERALLY.

- a. Customer shall:
 - (i) obtain adequate training for its personnel that interact with Provider's Support Services personnel and that assist in the implementation of Provider Software Products and upgrades to them;
 - (ii) appoint no more than two system administrators per shift, per site to server as the primary points of contact for Provider;
 - (iii) consult Provider Software Product Documentation and the Provider Support Services web site regarding the proper operation of Provider Software Products and for available fixes and workarounds before reporting any nonconformance;
 - (iv) allow Provider access to and use of Customer Data required for Provider to perform Support Services;
 - (v) employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to (i) securely administer the distribution and use of all Credentials and protect against any unauthorized access to or use of the Offerings, and (ii) control the content and use of Customer Data, including the uploading or other provision of Customer Data through the Offerings. Customer shall notify Provider of any unauthorized access or use of the Offerings upon becoming aware thereof; and
 - (vi) be solely responsible for: (A) the operation, maintenance, and management of, and all access to and use of, the Customer Systems; (B) all Customer Data, including its use, completeness, accuracy, quality, legality and reliability; (C) all information, instructions, and materials provided by or on behalf of Customer in connection with the Offerings; and (D) all access to and use of the Offerings directly or indirectly by or through the Customer Systems or Customer's Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

- b. Customer represents, warrants, and covenants that Customer owns or otherwise has (and, prior to Provider's receipt of the Customer Data, will have) the necessary rights and consents in and relating to the Customer Data, so that Provider's receipt, possession, processing, and (if applicable) hosting of the Customer Data in accordance with the Agreement does not and will not infringe, misappropriate, or otherwise violate any intellectual property rights or any privacy or other rights of any third party or violate any applicable laws.

3. SUPPORT SERVICES FEES AND COVERAGE FOR PERPETUAL LICENSES.

- a. **Support Services Fees for Perpetual Licenses.** Support Services fees shall be due and payable annually in advance. Fees for the initial Support Term set forth in the Order are mandatory. Unless otherwise expressly agreed in the Order, after the initial Support Term (and at the end of each Renewal Term), Support Services will automatically renew for twelve-month period(s) (each, a "**Renewal Support Term**") beginning on the expiration of the initial Support Term or a preceding Renewal Support Term, unless Customer notifies Provider that it is canceling Support Services as provided in the following "Cancellation of Support Services" section. Payment of the fees for the Initial Support Term and each Renewal Support Term is required for Customer to receive Support Services during such period. Support Services fees for Renewal Support Terms are subject to an increase not to exceed the greater of: (i) five percent (5%) over the fees charged for the preceding twelve month period or (ii) the increase in the Consumer Price Index over the immediately preceding twelve month period plus 2%, unless a greater increase is required by an escalation of a Third-Party Software Product provider's rates, in which case Provider shall provide Customer reasonable advance notice of the amount of the proposed increase.
- b. **Cancellation of Support Services for Perpetual Licenses.** Customer may cancel its enrollment in a Provider Support Services plan by providing Provider written notice of such cancellation 90 days prior to the beginning of a Renewal Support Term. Cancellation of Support Services will not relieve Customer of its payment obligations for the Initial Support Term or for the current or any previous Renewal Support Term, nor will it obligate Provider to provide Customer a refund or credit for any unused Support Services during such previous periods. Customer may re-enroll in a Provider Support Services plan at any time by paying a reinstatement fee equal to the total Support Services fees that would have been paid to Provider had Customer not terminated Support Services or the then-current license fee for the applicable Product, whichever is less. Termination of Support Services for a perpetual license will not terminate Customer's rights to use a Provider Software Product, which shall be determined by the license grant.

4. ADDITIONAL FEES AND CHARGES.

- a. **After Hours Support and Out-of-Scope Support Services.** Provider shall not be required to provide *After Hours Support* (unless Customer has acquired 24x7 Support Services under an Order or the parties expressly agreed otherwise in an Order), or to perform Out-of-Scope Support Services, but Provider may in its discretion agree to do so upon request from Customer. Where Customer has not acquired 24x7 Support Services, fees for After Hours Support and Out-of-Scope Services are separately chargeable, on a time and expenses basis, at Provider's then-current hourly rates and will be charged to Customer within thirty (30) days after such Services are performed or the charges are incurred. Provider shall have no obligation to provide Support Services or Out-of-Scope Support Services at Customer's site, but if Provider agrees to do so at Customer's request Customer shall reimburse Provider for any travel expenses incurred in accordance with Provider's then-current travel expenses policy, which will be made available by Provider upon request. "*After Hours Support*" means Support Services performed outside of the agreed upon hours specified in an Order (or if none stated, specified on Provider's website), at Customer's request.
- b. **Support for Third-Party Software Products and Hardware Products.** Support Services for Third-Party Software Products and Hardware Products may be available from Provider or Provider's third-party supplier, or a combination of the two (i.e., with Provider providing "first level" Support Services and the supplier providing "second level" Support Services). When Provider's third-party supplier is involved that supplier may require a separate agreement between Customer and the supplier and separate charges may apply.
- c. **Out-of-Scope Services.** "*Out-of-Scope Services*" includes: (i) Support Services for, or arising or made more time consuming as a result of customer modifications to a Provider Software Product; (ii) Support Services arising as a result of the use of a Provider Software Product outside its intended operating environment or in a manner not contemplated by its Documentation; (iii) training and consultation for issues clearly covered by Documentation; (iv) training covered by Provider training classes; (v) additional time required to provide Support Services as a result of Customer's use of unqualified personnel as Provider's point of contact; (vi) Support Services required to be performed on Customer's premises; (vii) Support Services arising as a result of Customer's failure to promptly install new releases or versions of Provider Software Product that Provider makes available; (viii) assistance with installing new releases or versions of a Provider Software Product; (ix) consulting covered by other Provider Services offerings, such as assistance with implementation, modification, or training; and (x) providing any Support Services to Customer's customers. Out-of-Scope Services will be billed in hour increments with a minimum charge of one hour.

If Provider is not providing Cloud Services to Customer, then Out-of-Scope Services also includes: (A) Support Services for, or arising or made more time consuming as a result of problems with operating systems, data bases, hardware, third-

party software or other environmental problems not caused by a Provider Software Product; (B) assistance with routine operating procedures, for example running backups;

d. Custom Modifications.

(i) **Support for Custom Modifications.** If Provider has created custom modifications to a Provider Software Product for Customer ("**Custom Modifications**") then Customer shall be entitled to Support Services for the Custom Modifications if Customer is paying Support Services fees for them.

(ii) **Migration of Custom Modifications to New Releases.** If Customer desires to have Custom Modifications migrated to a new release or version of a Provider Software Product, Provider may accept this work as a Professional Service if Provider determines the work is feasible and/or required. Provider will provide Customer a quote for such work and if Customer desires the work to be performed, Customer and Provider must sign an Order describing the Professional Services to be performed and incorporating the Professional Services terms. Payment of Support Services fees does not entitle Customer to have Custom Modifications migrated to new releases and versions of Provider Software Products.

5. SUPPORT SERVICES WARRANTY AND REMEDY. Provider warrants that its Support Services personnel shall use a reasonable level of care and skill in performing Support Services. This warranty applies for a period of thirty days after Provider completes the performance of Support Services with respect to a nonconformance reported by Customer. If Provider does not perform Support Services in accordance with this warranty and Customer notifies Provider in writing within the thirty day warranty period, Provider shall promptly re-perform the Support Services in accordance with the warranty without additional charge to Customer. If Provider is unable re-perform the Support Services consistent with the foregoing warranty, Provider shall refund a reasonable, pro-rata share of the fees paid solely for the Support Services during the month in which such warranty is breached and cannot be re-performed in compliance thereof; Customer agrees that this is Customer's sole and exclusive remedy for breach of the warranty set forth in this Section. If Provider notifies Customer that it is unable to correct a material nonconformance in a Provider Software Product after exercising commercially reasonable efforts in an attempt to do so, and the nonconformance materially diminishes Customer's ability to obtain value from the Provider Software Product, upon written request from Customer Provider shall accept a return of the Provider Software Product and shall issue Customer a refund equal to: (a) the fees paid for any unused portion of the current term; and (b) a pro-rata amount of the Perpetual License fees, if applicable, paid for the Provider Software Product, based on a five (5)-year, straight line amortization schedule. This section states Provider's entire liability and Customer's sole remedy for a Support Services warranty claim.