

Tungsten Automation (“Supplier”) Software Maintenance and Support (“Support”) Agreement

1. Definitions

“Defects” mean a material difference between the functionality of the Software and the applicable published user documentation for such Software that is reported to and replicable by Supplier. Supplier will determine what functions the Software was designed to perform.

“Case” means the file, contained within the Supplier’s Issue tracking system, which contains information about interventions made by Supplier support personnel on behalf of Customer, as well as communications between Supplier support personnel and Customer regarding status of an Issue. A Case will have a unique reference ID (Case ID).

“Issue” means a question relating to a specific, discrete behavior of the Software that can be answered by isolating its origin to a single cause.

“Support Portal” means Supplier’s online support resource for all Software.

“Support Request” means a request for assistance from Customer to Supplier Support with respect to the Software’s functionality or behavior.

“Third Party Products” means software not provided by Supplier as part of the Software, but that is required to ensure successful delivery of the Customer’s solution.

Professional Services Components: means licensed frameworks or other software assets provided to customer that are created, maintained and managed by Supplier’s professional services organization and which provide add-on functionality to core Supplier Software or in the case of frameworks provide reusable and configurable functionality for corresponding vertical solutions in order to assist in accelerating a customer’s solution implementation process.

2. Scope of Software Maintenance

2.1 Access to periodic version releases and software patches of the Software providing corrections to Defects, and, at the discretion of Supplier, modifications to the Software architecture, design, user experience, functionality or providing new functionality to the Software subject to Supplier’s Release Strategy and End of Life Policy.

2.2 Notification of any new version releases and software patches for the Software, such notification provided by Supplier’s posting on the Support Portal of the availability of such releases and patches.

2.3 Provision of updated documentation for new version releases and software patches as necessary on the Support Portal.

3. Scope of Support

3.1 Support for published and released Software functionality as defined by the Supplier Release Strategy and End of Life Policy.

3.2 Access to Supplier Support, with engagement within two (2) hours, during the Supplier Support’s regional business hours of the primary customer location, such availability as further described on the Support Portal.

3.3 Supplier Software Maintenance and Support available to two Customer named contacts, subject to Customer’s compliance with the Customer responsibilities as described in Section 4 below.

3.4 An unlimited number of Support Requests allowed per year.

3.5 Online access to the Support Portal which includes product documentation, knowledgebase information and which allows for submission of Support Requests, access to Software downloads, and access to Supplier’s user communities. Customers are required to have a valid user ID and password to access online support.

3.6 Supplier will deliver the Supplier Support remotely. Support assistance must be requested via online Case submission. If Supplier and Customer agree that onsite services are necessary to address any Software Issue, then in each such event Supplier will invoice Customer for reimbursable expenses incurred by Supplier in providing such onsite services, and Customer will pay the invoiced amount per the payment terms provided in the Agreement between Supplier and Customer for the license of the Software.

4. Customer Responsibilities

4.1 In addition to the Customer’s responsibilities as set forth in the Agreement between Supplier and Customer for the Software, the Customer will be solely responsible, at the Customer’s expense, to:

4.1.1 Notify Supplier immediately of any software maintenance or support Issues.

4.1.2 Train users on use of the Software.

4.1.3 Be familiar with and leverage the use of the Support Portal, and ensure that each person engaging Supplier support personnel is trained and where required by Supplier certified in order to fulfill the Customer responsibilities defined in this Software Maintenance and Support Agreement.

4.1.4 Maintain the confidentiality of and prevent disclosure of any information, technical data and other information made available to Customer through the Support Portal, user groups and user forums provided by Supplier.

4.1.5 Apply all new version releases and software patches in a timely manner to ensure conformance with Supplier Release Strategy and End of Life Policy.

4.1.6 Designate a key contact for software maintenance and support communications in the manner requested by Supplier. Supplier may limit Software Maintenance and Support communications to designated key contacts. Supplier may require Customer to deliver to Supplier a third party authorization agreement as a precondition to Supplier working with Customer's third party consultants in the implementation and/or support of the Software.

4.1.7 Provide Supplier with timely access, remote and/or onsite as applicable, to Customer's facilities, including Customer's servers upon which the Software runs, with which the Software interfaces, and/or upon which the Software relies, including but not limited to the database server with which the Software interfaces for the purpose of troubleshooting or of acquiring data pertinent to Supplier support personnel to carry out its support obligations for Issues being experienced with the Software.

4.1.8 Provide Supplier timely return of requested troubleshooting data, including, but not limited to, Software error messages, system error messages, sequence of actions taken to reproduce an Issue, Software log files, and information concerning changes made to the Software by Customer, in order for Supplier Support to carry out its support obligations for Issues being experienced with the Software.

4.1.9 Follow backup and maintenance procedures for the Software, and software upon which the Software runs, with which the Software interfaces, and/or upon which the Software relies, and be fully responsible for such backups. Support does not include consulting services to restore Customer servers, workstations, data repositories or Software to its original Supplier-installed configuration in the event of damaged or lost data which are solely Customer's responsibility.

4.1.10 Cause Customer's application environment to meet and comply with the specifications and requirements set forth in Supplier's Technical Specifications, and otherwise assume responsibility for all standard IT/IS infrastructure requirements, including the purchase, maintenance, administration and service of hardware and software upon which the Software runs, with which the Software interfaces, and/or upon which the Software relies, up to and including as appropriate:

4.1.10.1 An efficient and functioning computer network which meets or exceeds the functional specifications required for operation of the Software.

4.1.10.2 Appropriate computer equipment in proper working condition, up to and including servers and workstations.

4.1.10.3 Maintain a virus free network and computer equipment environment in which the Software runs, interfaces with, and/or relies upon.

4.1.10.4 A database with which the Software interfaces, updated per manufacturer's recommendations and properly tuned and maintained for acceptable performance.

4.1.10.5 A firewall appropriately configured to allow all Software related communications to traverse the network per the functional specifications required for operation of the Software.

4.1.10.6 A web application server in proper working condition, in the event that Customer purchases web client licenses of the Software or "combo" full/web client licenses of the Software.

4.1.10.7 A messaging server and software in proper working condition, such as Microsoft Exchange.

4.1.11 If Supplier is required to provide Support services to Customer to remedy any Software support or performance issues caused by or resulting from Customer's failure to comply with Customer's responsibilities as provided above or in the Agreement between Supplier and Customer for the license of the Software, then in each such event Supplier will invoice Customer for all fees at Supplier's then-current hourly rate for the services provided by Supplier and for all reimbursable expenses incurred by Supplier in providing such services, and Customer will pay the invoiced amount per the payment terms provided in the Agreement between Supplier and Customer for the licenses of the Software.

5. Exclusions

5.1 Support does not include new software solutions or modules that are normally licensed by Supplier separately from the Software pertaining to this Agreement.

5.2 Supplier's obligation to provide Software Maintenance and Support will not extend to any interference with or failure or degradation of the performance of the Software caused by or arising from (a) Customer's failure to meet and comply with Customer's responsibilities as provided above or in the Agreement between Supplier and Customer for the license of the Software, or the specifications and requirements set forth in Supplier's Technical Specifications as necessary for implementation and/or execution of the Software, including as provided above or in the Agreement, (b) Customer's violation of any restrictions upon the use of the Software as provided pursuant to the license agreement between the parties, including, without limitation, any modification or enhancement of the Software, (c) Customer's installation, without Supplier's prior written approval, of any other software, hardware, product or apparatus in the Customer's application environment following the installation of the Software or (d) a third party's implementation, support or provision of other services associated with the Software, or the third party's failure, violation or action as described in this Section 5.2.

5.3 Support does not include correction of Issues caused by or arising from interference with functionality of the Software due to Third Party Products, including, but not limited to, operating systems, hardware, software or network environment, not approved in Supplier's Technical Specifications. Such Third Party Products may need to be updated in compliance with Supplier Technical Specifications to ensure proper functioning of the Software. Support further does not include correction of Issues caused by interconnection or integration of the Software with Third Party Products not designated as in compliance with Supplier's Technical Specifications. If after analysis it is determined that an Issue is caused by a Third Party Product, then in each such event Supplier will invoice Customer for reimbursable expenses incurred by Supplier in providing such services, and Customer will pay the invoiced amount per the payment terms provided in the agreement between Supplier and Customer for the license of the Software.

5.4 Support does not include the installation, upgrade, implementation or migration of new version releases or software patches of the Software or correction of Issues experienced as a result of incorrect installation of version releases and software patches of the Software. Furthermore, support does not include systems engineering, code programming or operations procedures of any sort.

5.5 Support does not include the correction of Issues caused by computer viruses or security breaches or force majeure factors.

5.6 Support does not include the operation of the Software, including, but not limited to, administration, script creation and report generation.

5.7 To the extent that Support is purchased in regards to Professional Services Components, Support does not include updates to such Professional Services Components to the extent that any Third Party Software utilized in conjunction with such Professional Services Components 1. discontinues provision of the same functionality, 2. the integration and interaction with associated Third Party Software fundamentally changes, 3. any associated Third Party Software is discontinued or unsupported or 4. The manufacturer of the Third Party Software does not grant Supplier adequate insight into changes made to the Third Part Software. In the event of any of the above occurrences, Supplier will make recommendations on how best to resolve the Third Party Software dependency of the relevant Professional Services Component.

5.8 Support is only provided for Software under an active Support Agreement with Supplier. All components of any Software, where Support is available and offered by Supplier, must be included under such Support Agreement and any renewal thereof.