

This Maintenance & Support Policy, as may be amended by Telligent from time to time, sets forth the terms and conditions under which Telligent will provide Maintenance to Customer for the Software.

### 1. Definitions.

- 1.1 **"Non-Conformity" or "Non-Conformities"** means any failure of the Software to operate substantially in accordance with the applicable Software Documentation.
- 1.2 **"Software Documentation"** means the official user or operator documentation for the Software published by Telligent and generally made available to its customers, as may be updated from time to time by Telligent. Such Software Documentation will identify the specific product features and functionality of the Software (and each component thereof).
- 1.3 **"Updates"** means (a) any bug fixes, patches, corrections, and workarounds to the features or functionality of the Software (or a component thereof), and (b) any modifications and other minor feature changes and performance improvements to the Software (or a component thereof) to the extent necessary to address known Non-Conformities.
- 1.4 **"Upgrades"** means any enhancement or new release version of the Software (or a component thereof) that significantly add, enhance, or increase product features and major functionality of the Software (or any component thereof) without materially altering existing features or functionality.

### 2. Maintenance, Enhancements & Services.

- 2.1 Commencing on the Effective Date of the Software License or Maintenance & Support Agreement, as applicable, and continuing through each Maintenance Term for so long as the Annual Maintenance Fees are paid in advance by Customer, Telligent shall provide Customer the following standard support services:
  - (a) Telligent shall use commercially reasonable efforts to correct reproducible errors, defects, and malfunctions of the Software in a workmanlike manner within a reasonable period of time and provide such other corrections and solutions as are necessary to keep the Software conforming substantially to the Software Documentation and shall perform such services in accordance with the applicable service levels and escalation procedures listed in the Error Resolution Procedure attached hereto. The methods and techniques for resolving any such nonconformance will be at the sole discretion of Telligent. Maintenance shall be available during Normal Business Hours, which are Monday through Friday, 8 a.m. to 6 p.m. Central time, except for U.S. holidays.
  - (b) In the event the Software fails to the extent of being inoperable for Customer's intended production purposes, Telligent shall promptly commence corrective action in accordance with the Error Resolution Procedure attached hereto.
  - (c) Telligent shall provide telephone help-desk support during Normal Business Hours. Telephone support is available only for Authorized Contact(s).
  - (d) Telligent will provide to Customer all Updates and Upgrades, which are of general interest and which are announced by Telligent as being made available

generally to its customers at no additional charge as part of the standard offerings for Maintenance. Any Updates or Upgrades that may be provided by Telligent are subject to the grant of license and all restrictions on use set forth in the Software License as of the date of delivery. Telligent is not obligated to provide any Updates or Upgrades (or otherwise perform Maintenance) to Customer if Customer has not paid the applicable Annual Maintenance Fee or if Customer is not in compliance with this Maintenance & Support Policy or with the Software License.

- (e) Customer shall be responsible for applying and/or installing all Updates and Upgrades to the Software in accordance with the installation instructions provided by Telligent, and any failure to timely install such Updates and Upgrades can result in delays or in-ability of Telligent to perform Maintenance. Customer acknowledges that its failure to promptly implement all Updates and Upgrades supplied by Telligent may render the Software unusable or non-conforming to the Software Documentation and otherwise will void any applicable warranty or indemnification.

- 2.2 Telligent will provide standard support services for: (a) the two (2) most current versions of the Software; (b) only for those components of the Software that have not been affected by any Customer modification or merger with third party or custom computer programs; and (c) only those components of the Software installed on operating systems that satisfy the operating system hardware and software requirements listed in the Software Documentation. Maintenance will not be provided if: (i) the Software is not used in accordance with the Software License; or (ii) the Software has been altered or modified by Customer or a third party; or (iii) Customer makes significant changes to the hardware and/or software in Customer's operating environment that are not supported by or compatible with the Software; or (iv) to the extent necessary, Customer fails to provide Telligent with remote access to Customer's operating environment; or (v) nonconformance is caused by a failure or interruption of electrical power, an accident or cause external to the Software, including, but not limited to, problems or malfunctions related to Customer's network, database, third-party software products, and/or Customer's hardware, operator error, or Customer's negligence or willful misconduct; or (vi) Annual Maintenance Fees for the Software have not been paid by Customer.

- 2.3 In order to receive Maintenance, Customer shall advise Telligent of a suspected failure and submit all necessary documentation for determination and resolution by Telligent. In the event that it is determined that such failure is caused by a source external to the Software and Customer desires Telligent to perform services to remedy such failure, Telligent may require Customer to pay for such services.

### 3. Annual Maintenance Fee Payment & Delivery.

- 3.1 The first Annual Maintenance Fee for the Software shall be due on the Effective Date. Each subsequent Annual Maintenance Fee payment shall be due on each anniversary thereof. Any undisputed sums remaining unpaid thirty (30) days after the due date until paid shall bear interest from the

due date until paid at the lesser of 1.5% per month or the highest rate permitted under applicable law.

- 3.2 During any Maintenance Term for which Customer has paid the applicable Annual Maintenance Fees, Customer shall be entitled to the following:

- (a) reasonable notice from Telligent of the discontinuance of support for a particular version of the Software; and
- (b) reasonable notice from Telligent as to any material changes to the key features and functionality of the Software, provided that existing material functionality of the Software will not be removed in any subsequent Updates or Upgrades to the Software, unless made technically necessary by changes to the operating system.

#### 4. Term & Termination.

- 4.1 Upon expiration of the initial Maintenance Term, the Maintenance Term shall renew automatically for successive one (1) year terms unless one party provides the other party with written notice of termination more than thirty (30) days prior to the expiration of the then current Maintenance Term. Subsequent Annual Maintenance Fees shall be charged at Telligent's then current standard rates. Within sixty (60) days prior to the expiration of the then current Maintenance Term, Telligent shall provide Customer with written notice (which may be in the form of an invoice) detailing the Annual Maintenance Fee for the subsequent renewal of such Maintenance Term.
- 4.2 If Maintenance has been terminated by Customer, Customer may reinstate such Maintenance upon payment of the Annual Maintenance Fee in effect at the time, plus all unpaid Annual Maintenance Fees for periods subsequent to the date of termination or such alternate reinstatement fee, if any, as the parties mutually agree to accept in writing at the time of reinstatement.
- 4.3 Maintenance may be terminated by Telligent prior to the expiration of the Maintenance Term upon the occurrence of any of the following events of default and the failure of Customer to cure such default within thirty (30) days after written notice of such default has been given by Telligent to Customer: (a) if any undisputed sum of money owed by Customer is not paid when due; (b) if any breach occurs under any confidentiality provisions; or (c) if any material breach by Customer occurs as to any other term hereof or any other agreement between Telligent and Customer.
- 4.4 In the event of any such default and the continuance thereof beyond the applicable cure period, Telligent shall have the option to terminate Maintenance by giving written notice of termination to Customer. Upon such termination, all amounts owed by Customer and unpaid as of the date of such termination shall become immediately due and payable to Telligent.
- 4.5 If either party goes into receivership, bankruptcy, or insolvency, or makes an assignment for the benefit of creditors, or ceases to operate its business, Maintenance shall be immediately terminable by the other party by written notice, but without prejudice to any rights of the terminating party hereunder, such termination to be effective as of one day prior to such event.
- 4.6 Maintenance may be terminated by Customer prior to the expiration of the Maintenance Term in the event of a breach by Telligent of any warranty expressly set forth herein or a material breach by Telligent of any other term or condition hereof and Telligent fails to cure such breach within thirty (30) days after written notice of such breach is given by Customer to Telligent. In the event of any such default,

Customer shall have the option to terminate Maintenance by giving notice of termination to Telligent immediately and receive a refund of any prepaid Annual Maintenance Fees for that portion of the Maintenance Term subsequent to such termination.

- 4.7 Customer's payment obligations and any other provision hereof, which by its terms is intended to so survive, shall survive any expiration or termination of Maintenance for any reason.

#### 5. Warranties, Disclaimers & Exclusive Remedies.

- 5.1 Telligent warrants that Maintenance will be provided in a professional manner consistent with industry standards. Customer must notify Telligent of any service deficiencies within thirty (30) days from performance of the defective services.
- 5.2 **TELLIGENT DOES NOT GUARANTEE THAT THE SOFTWARE WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT TELLIGENT WILL CORRECT ALL SOFTWARE ERRORS.**
- 5.3 **FOR ANY BREACH OF THE ABOVE WARRANTIES, CUSTOMER'S EXCLUSIVE REMEDY AND TELLIGENT'S ENTIRE LIABILITY SHALL BE: (A) THE CORRECTION OF SOFTWARE ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF TELLIGENT CANNOT SUBSTANTIALLY CORRECT SUCH BREACH IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE MAINTENANCE TERM AND RECOVER A PRORATED PORTION OF ANY MAINTENANCE FEES PREPAID TO TELLIGENT; OR (B) THE REPERFORMANCE OF THE DEFICIENT MAINTENANCE SERVICES.**
- 5.4 **TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

6. **Customer Responsibilities.** Customer shall designate points of contact who shall be the only Authorized Contacts authorized to submit support requests or otherwise make Maintenance-related inquiries to Telligent. Customer is responsible for reporting Non-conformities to Telligent and following Telligent's procedures specified in the Error Resolution Procedure, attached hereto, as updated from time to time by Telligent, including without limitation, testing and verifying any documented and reproducible Non-Conformities in the Software, and providing Telligent with a description of the problem and the conditions under which it occurred. Any such Non-Conformity reports shall be treated as confidential. Customer must identify its Customer account number when making any request for services. Customer will perform routine preventative maintenance and cleaning of each CPU on which the Software is installed or accessed in the Designated Location. Customer will maintain remote access to the Designated Location under which Telligent may remotely examine and diagnose the Software installed on CPUs via the Internet or other Customer-provided gateway to the extent necessary. Customer is solely responsible for maintaining procedures external to the Software for reconstruction of lost or altered files, data, or programs to the extent that it deems necessary and for performing any such reconstruction.

#### 7. Miscellaneous Provisions.

- 7.1 Neither party will disclose any Maintenance-related terms, conditions, and/or fee amounts to any third party, unless required to do so by order of any court or governmental authority of competent jurisdiction.

- 7.2 This agreement shall be binding upon and inure to the benefit of the parties and their successors, permitted assigns, and legal representatives. Customer may not assign, sublicense, or otherwise transfer the Maintenance unless in conjunction with a transfer of the Software.
- 7.3 This agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without regard to its choice of law, and all applicable laws, regulations, treaties, or ordinances of the U.S. This agreement shall be interpreted in accordance with the commonly understood meaning of the words and phrases in the U.S. All judicial proceedings regarding any dispute and/or controversy relating to Maintenance shall be initiated in the State or Federal courts sitting in Delaware, and each party irrevocably submits to the jurisdiction and venue of any such court in any such proceeding.
- 7.4 In the event of any legal action, arbitration, or proceeding brought by either party against the other arising out of this agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in such action and such amount shall be included in any judgment or arbitration decision rendered in such proceeding.
- 7.5 If any of the parties' obligations under this agreement are found by a court of competent jurisdiction to be illegal or unenforceable in any respect, such illegality or unenforceability will be interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law but shall not affect the other provisions of this agreement, all of which shall remain enforceable in accordance with their terms.
- 7.6 The parties shall not be deemed to waive any of their rights or remedies under this agreement unless such waiver is in

writing and signed by the party to be bound. No delay or omission on the part of either party in exercising any right or remedy under this agreement will be construed to be a waiver thereof. A waiver of any right or remedy on any one occasion shall not be construed as a bar to or waiver of such right or remedy or any other right or remedy on any future occasion.

- 7.7 In no event shall a party be liable to the other party for any delay or failure to perform its obligations under this agreement (other than a failure to pay amounts owed), which delay or failure to perform is attributable to an event of force majeure or other causes beyond the control of such party and without the fault or negligence of the party claiming excusable delay.

## **8. Entire Agreement.**

- 8.1 This agreement supersedes and terminates all prior written and oral agreements, proposals, promises, and representations of the parties with respect to the services covered by this agreement.
- 8.2 The terms of this agreement shall not be amended or changed by the terms of any purchase order or acknowledgement of Customer, even though Telligent may have accepted or signed such document. Any terms or conditions in any amendment, addenda, or written order form that vary from, or add to, the terms and conditions of this agreement shall be of no force and effect.
- 8.3 This agreement has been written in the English language and each party waives any rights that it may have under applicable law to be written in the language of the country of that party's domicile or incorporation.

**ERROR RESOLUTION PROCEDURE**

Telligent strives to provide exceptional customer support to all of its clients. The technical support staff accomplishes this in many different ways; however, it is the resolution of Software-related questions that is the primary objective. In addition to resolving questions, the technical support staff serves as the interface with Telligent product development staff when product deficiencies (Product Change Requests (PCR) or Trouble Tickets) are identified.

During Normal Business Hours, technical support shall provide a response to notice of a reported Non-conformity with the Software from Customer pursuant to the following:

**1. Response and Resolution Goals:**

Category	Duration to Correct Nonconformity	Days to Identify*			
		Workaround (Initial recovery)		Fix	
Category	Initial Response	75%	99%	75%	99%
Severity 1	30 minutes	4 hours	24 hours	3 days	7 days
Severity 2	2 hours	24 hours	2 days	5 days	15 days
Severity 3	4 hours	5 days	10 days	30 days	45 days
Severity 4				45 days	60 days
Severity 5				60 days	120 days

**2. Category Definitions:**

**Initial Response:** During Normal Business Hours, the initial response to Customer after receiving notice from Customer of the Non-conformity with the Software.

**Severity 1:** A production application is no longer producing output (“Out of Production”). Problems that affect a production application, and cause output to no longer be produced or useable. There are no known workarounds for this type of problem. Technical support will work until a resolution and/or workaround has been provided.

**Severity 2:** An application is encountering severe problems that impact a production cycle. These types of problems affect a production job, however, a known workaround and/or intervention is available. The workaround and/or intervention allows for the successful completion of a given job. This differs from a Severity 1, as there is a known workaround and/or intervention.

**Severity 3:** All activities are assigned this severity unless technical support is notified otherwise. These problems are typically not critical to a given application and are not affecting production.

**Severity 4:** The Non-conformity was reported and a viable workaround has been provided to Customer.

**Severity 5:** A minor Non-conformity is being encountered. All enhancements and documentation issues are assigned this severity.

\* When Customer reports the Non-conformity to technical support, it is sometimes necessary that Customer send data to technical support for identification of the problem. In cases where data is necessary, the number of days to identify and correct the Non-conformity shall not commence until technical support receives such data. Technical support personnel assigned to resolve the Non-conformity shall notify Customer immediately upon receiving the requested data. If problems exist with the data received, technical support personnel shall notify Customer within 24 hours of receipt. For those Non-conformities not requiring data, the number of days to identify and correct the Non-conformity shall be based on the date the initial incident was reported to technical support.

**3. Escalation:** Prior to escalating the severity level, the following procedure is followed in accordance with the matrix above. When the Non-conformity is reported to technical support, it is assigned a severity level of 3 unless Customer notifies technical support that it reasonably believes such Non-conformity merits a higher severity level. When the non-conformity is assigned a severity level of 1 or 2, the technical support manager is notified and is responsible for assigning the appropriate personnel required to resolve such Nonconformity. If the Non-conformity merits a higher severity or Customer believes that the Non-conformity is not being properly addressed, Customer should contact the technical support manager immediately. When calling the technical support manager, it is requested that Customer provide the number assigned to such Non-conformity. If Customer believes, after speaking with the technical support manager, that an activity or Non-conformity is still not being resolved in a timely manner, the appropriate account representative should be contacted.