

Enlightened Software, Inc.

Support and Subscription Services - Terms and Conditions

Enlightened Software, Inc. (“**Enlightened**”), a Florida corporation, shall provide Technical Support and Subscription Services (as defined herein) (collectively, the “**Services**”), per the terms of this Agreement.

1. Definitions

A. “Technical Support” means the provision of technical assistance by Enlightened to the Customer Support Administrator(s) with respect to installation, analysis of problem reports, and errors.

B. “Subscription Services” means the provision of Major Releases, Minor Releases, Maintenance Releases, if any, to the Software, as well as corresponding Documentation to Customer’s License Administrator.

1. “Major Release” also known generally as an “Upgrade” means a generally available release of the Software that contains functional enhancements or extensions, designated by Enlightened by means of a change in the digit to the left of the first decimal point (e.g. **Software 5.0.0.0 >> Software 6.0.0.0**).

2. “Minor Release” means a generally available release of the Software that introduces a limited amount of new features and functionality, designated by Enlightened by means of a change in the digit to the right of the decimal point (e.g. **Software 5.0.0.0 >> Software 5.1.0.0**).

3. “Maintenance Release” or “Update” means a generally available release of the Software that typically provides maintenance corrections or fixes only, designated by Enlightened by means of a change in the digit to the right of the third decimal point (e.g. **Software 5.0.0.0 >> Software 5.0.0.1**).

C. “Services Period” means the period for which Customer has purchased the Services and any subsequent renewal periods and shall commence: (a) for Software licenses for which Services are mandatory: on the date of shipment of the applicable Software license, and (b) for Software licenses for which Services are optional: on the date of purchase of the Services.

D. “Documentation” means any user instructions, manuals or other materials, and on-line help files regarding the use of the Software, as revised by Enlightened from time to time, that are generally provided by Enlightened in connection with the Software.

E. “Error” means a failure in the Software to materially conform to the specifications as described in the applicable Documentation.

F. “Services Fees” means those fees that are applicable for the Services as specified in a corresponding Enlightened or reseller invoice.

G. “License Administrator” means the Customer-specified employee who is responsible for: (a) facilitating election, purchase, and, if applicable, renewal of the Services; (b) receiving and administering Software licenses, Major, Minor and Maintenance Releases from Enlightened; and (c) Customer adherence to the license restrictions of this Agreement. Customer may change its License Administrator upon reasonable advance written notice to Enlightened.

H. “Modified Code” means any modification, addition and/or development of code scripts (whether created by Enlightened, Customer or any third party) that deviates from the predefined product code tree(s)/module(s) developed by Enlightened for production deployment and/or use, and specifically excludes customizable Software options made generally available by Enlightened and for which Services are available.

I. “Open Source Software” means components provided with the Software, for which the source code is generally available and are licensed under the terms of various published open source software license agreements or copyright notices accompanying such software components in addition to any vendor specific license terms provided with the Open Source Software.

J. “Software” means one or more individual Enlightened software products or software product suites made generally available by Enlightened and specified in the Order. Software does not include Third Party Products, Modified Code or customized deliverables that Enlightened creates specifically for Customer.

K. “Support Administrator” means the Customer-specified contact designated on the Order responsible for communicating and engaging Enlightened for Technical Support services with respect to problem reports. Customer’s primary License Administrator is responsible for the administration of authorized Support Administrators via the Enlightened support website.

L. “Third Party Products” means any third party proprietary software or hardware that is manufactured by a party other than Enlightened or its affiliates and has not been incorporated into Enlightened Software or Services offerings of Enlightened or its affiliates.

2. Service Terms

2.1 Provision of Services. Enlightened shall provide the Services during the Services Period, subject to Section 2.2 below. Detailed information on service level objectives, response times, business hours and contact numbers is located at: www.enlightenedsoftware.com/support

2.2 End of Availability. Enlightened may, at its discretion, decide to retire Software and/or Services at any time upon notice (“End of Availability”). Notice of End of Availability, last date of general commercial availability and applicable support lifecycle policies and timelines for discontinuance shall be provided via the Enlightened Support Services website at: www.enlightenedsoftware.com/support

2.3 Requirements. Customer may purchase initial Services only for the most current, generally available release of the Software. Limited exceptions may apply for specific Software as provided for at: www.enlightenedsoftware.com/support

- (a) For all current and additional Software licenses purchased for a particular Enlightened Software product or suite, Customer must purchase and/or renew Services at the same Services level in a given functional discipline (e.g. Test, Development, Quality Assurance, Production). Currently, Enlightened only sells licenses at the Production level.
- (b) For most Software, a minimum of one (1) year of Services must be purchased. Subject to Section 2.2, Enlightened may update Services terms after the first year of the Services Period with thirty (30) days advance notice to Customer of any changes deemed by Enlightened to have potential adverse and/or material impacts to the Customer. Upon any renewal, Enlightened’s then current terms and conditions for the Services will apply. Except as otherwise expressly set forth herein or in the applicable Order, Services will automatically renew for successive one (1) year terms unless either party gives written notice of its intent not to renew at least thirty (30) days prior to the end of the current Services Term. A decision to terminate Services or otherwise not renew Services will not terminate the applicable Software licenses.
- (c) Enlightened, during the course of providing Technical Support, may be required to analyze whether or not a reported problem is related to Modified Code. Where Enlightened suspects that a problem may be related to Modified Code, Enlightened in its sole discretion, reserves the right to request that the Modified Code be removed. If Enlightened cannot directly identify the root cause of a problem, or reasonably suspects that the problem is related to Modified Code, Customer shall be informed that additional assistance may be obtained by Customer directly from various product discussion forums or via engagement for an additional fee with Enlightened’s development staff.

2.4 Eligibility. Problems caused by the following situations are not included in Services but may be addressed separately upon request at Enlightened’s then-current hourly rates for consulting, subject to the then-current standard consulting services terms and conditions:

- (a) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by Enlightened; operation of the Software with other media not in accordance with the manufacturer’s specifications; or causes other than ordinary use; or
- (b) improper installation by Customer or use of the Software that deviates from any operating procedures as specified in the Documentation; or
- (c) actual or attempted modification, alteration or addition to the Software undertaken by Customer or any third party; or
- (d) Third Party Products, other than the interface of the Software with the Third Party Products; or
- (e) Modified Code; or
- (f) any customized deliverables created by Enlightened specifically for Customer as part of consulting services; or
- (g) any technical issue unrelated to an Error.

2.6 Customer Responsibilities. Customer’s obligations regarding Services are subject to the following:

- (a) Customer agrees to receive from Enlightened communications via e-mail, telephone, and other formats, regarding renewals, quotes, and other topics relating to Services (such as communications concerning an Error or other technical issue and the availability of new releases). Customer's Support Administrator shall cooperate to enable Enlightened to deliver the Services.
- (b) Customer is solely responsible for the use of the Software by its personnel and shall properly train its personnel in the use and application of the Software.
- (c) Customer shall promptly report to Enlightened all problems with the Software, and shall implement any corrective procedures provided by Enlightened reasonably promptly after receipt.
- (d) Customer is solely responsible for protecting and backing up the data and information stored on the computers on which the Software is used and should confirm that such data and information is protected and backed up before contacting Enlightened for Technical Support; Enlightened is not responsible for lost data or information in the event of Errors or other malfunction of the Software or computers on which the Software is used.

3. Services Fees

3.1 Services Fee Schedule

- (a) Unless otherwise indicated, Services Fees are payable on the Effective Date or, in the case of a renewal term, no later than the date of commencement of the applicable Services Period, and due in accordance with Section 3.3 below. Services Fees are non-refundable upon payment.
- (b) The Services Fees, including renewals, are at the then-current list price. Enlightened may increase applicable Services Fees for renewals. If Customer elects not to renew the Services or, in the case of Software that may initially be purchased without Services, if Customer elects not to purchase the Services when Customer acquires the Software license, Customer may later re-enroll or enroll, as the case may be, for the Services, subject to Subsection 3.1(d) below.
- (c) For any renewal or addition of Services, which requires a minimum purchase of one (1) year, Customer may elect to make Services for all or a portion of its Software licenses coterminous, in which case, Enlightened will prorate the applicable Services Fees for the current Services Period based on the number of full or partial months remaining in the current Services Period.
- (d) If Customer purchases Services after acquiring the Software licenses, or had elected not to renew Services and later wishes to re-enroll in the Services, Customer must move to the then-current latest Major Release of the Software, and must pay:
 - (i) the applicable Services Fees for the current Services Period, , and
 - (ii) the amount of Services Fees that would have been paid for the period of time that Customer had not enrolled in the Services, and
 - (iii) a 20% reinstatement fee on the sum of the Services Fees in (i) and (ii).
- (e) In cases where Customer purchases a license to migrate up from one edition of the Software to another, any unused period of the Services Period on the original license will be converted and used to extend the Services Period for the newly purchased upgraded license.

3.2 Taxes. All Services Fees are exclusive of any taxes, duties, or similar charges imposed by any government. Customer shall pay or reimburse Enlightened for all federal, state, dominion, provincial, or local sales, use, personal property, excise, value added, withholding or other taxes, fees, or duties relating to the transactions contemplated by this Agreement (other than taxes on the net income of Enlightened).

3.3 Invoicing and Late Payments. All invoices issued hereunder by Enlightened are due and payable within thirty (30) days of the date of the invoice. All amounts that are not paid on time by Customer shall be subject to a late charge equal to one and one-half percent (1.5%) per month, or, if less, the maximum amount allowed by applicable law. If payment of any Fee is overdue, Enlightened may also suspend performance until such delinquency is corrected.

4. Limited Warranty. Enlightened warrants that the Services to be performed hereunder will be done in a workmanlike manner and shall conform to industry standards. Upon Customer providing Enlightened with a reasonably detailed written notice to cure within thirty (30) days of occurrence of the nonconformance, Enlightened will re-perform the Services to achieve commercially reasonable conformance with the above warranty. TO THE MAXIMUM EXTENT MANDATED BY LAW, THIS WARRANTY IS GIVEN EXPRESSLY AND IN PLACE OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TO THE MAXIMUM EXTENT MANDATED BY LAW, THIS REMEDY WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF SERVICES.

5. Limitation of Liability. TO THE MAXIMUM EXTENT MANDATED BY LAW, ENLIGHTENED SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON

CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO CUSTOMER. ENLIGHTENED'S LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE SERVICES FEES PAID BY CUSTOMER TO ENLIGHTENED UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT MOST DIRECTLY GIVING RISE TO THE CLAIM.

6. Termination. Enlightened may suspend performance of Services if Customer fails to meet its obligations as set forth under this Agreement. Enlightened may terminate Services if such failure continues for thirty (30) days after Enlightened's written request to meet these obligations. Enlightened may terminate the Agreement and all Services at any time if (1) it is discovered that Customer is currently in breach of its Software license restrictions, pursuant to Customer's Software license or (2) Customer is in material breach of this Agreement.