



SOFTWARE LICENSE AGREEMENT

Platform Computing, Inc., an IBM company, with offices at 101 Metro Drive, Suite 248, San Jose, CA. 95110, U.S.A (“Platform”).

and

you, the person or entity acquiring a license under this Agreement (“Licensee”).

For good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the parties agree as follows:

1.0 General Terms

This Agreement contains the terms and conditions related to the licensing of software products and provision of related maintenance and support services provided by Platform to Licensee.

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2.0 DEFINITIONS

"Available CPU's" means the quantity of central processing units on which the Software is entitled to be run;

"Designated Server" means for Platform Software using FLEXlm™ license keys, Licensee's license management server, as identified by its host name and host ID;

"Documents" means all user documentation supplied by Platform with the Software;

"Enterprise" means with respect to any party, includes any legal entity that, by more than 50% owns, is owned by, or is under common ownership with that party.

"Software" means the specific Platform computer program(s) in binary format, supplied by Platform hereunder, and includes any Documents.

3.0 GRANT OF LICENSE

(a) **Non-Production License.** If Licensee has licensed the Software for non-production purposes, subject

to the terms and conditions of this Agreement, Platform grants to Licensee a non-exclusive, nontransferable license to use the Software and Documents in a non-production environment, solely for the non-production purposes of testing, evaluation, and integration development between the Software and products sold or licensed by Licensee, for a license term corresponding to the period of time that Licensee is authorized by the license key issued with the Software. At the expiry of such license term, Platform may in its sole discretion renew the license term for a subsequent license term.

(b) **Production License.** If Licensee has licensed the Software for production use, subject to the terms and conditions of this Agreement, Platform grants to Licensee a non-exclusive, nontransferable license to use the Software only for Licensee's internal business purposes, and only for use on the Designated Server, if applicable, with the Available CPU's, without the right to grant sublicenses. Licensee may make one back-up copy of the Software provided the back-up copy does not execute unless the production version of the Software cannot execute. This license applies to each copy of the Software that Licensee makes. This Agreement can be extended by Platform to cover additional Available CPU's of Software, upon Licensee's payment of the relevant fees. Licensee shall ensure that anyone who uses the Software (accessed either locally or remotely) 1) does so only on Licensee's behalf and 2) complies with the terms of this Agreement. If Licensee has ordered a **time limited** right to use the Software, then the right to use shall be valid for a period of twelve (12) months from the date that Platform sends the license key to Licensee, subject to the provisions of Section 13 of this Agreement.

4.0 RESTRICTIONS

Licensee may not: (a) use, copy, modify, or distribute the Software except as expressly permitted in this Agreement; (b) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Software, except as expressly permitted by law without the possibility of contractual waiver; (c) use any of the Software's components, files, modules, audio-visual content, or related licensed materials separately from that Software; (d) sublicense, rent, or lease the Software; (e) use the Software to provide commercial hosting or other commercial information technology to third parties; (f) make the Software available to third parties, other than for Licensee's internal business purposes, without the prior written consent of Platform; (g) create derivative works based on the Software, or use the Software for any purpose other than as provided for in this Agreement (including, without limitation, altering any notices of intellectual property or other proprietary rights); (h) increase the number of Available CPU's, except upon payment of the relevant fees to Platform; (i) if applicable, make changes to the Designated Server, or make any changes in the geographic location from that shown on Licensee's purchase order, subject to Platform's consent, such consent not to be unreasonably withheld or delayed; and/or (j) make copies of Software or any Documents, except for tangible copies of on-line Documents made by Licensee for Licensee's internal use and Licensee agrees to use commercially reasonable efforts to prevent any unauthorized copying of the Software.

5.0 RESTRICTED RIGHTS SOFTWARE

If acquired for or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), this Software is acquired as "commercial computer software" subject to the rights and restrictions of this Agreement, pursuant to DFARS 252.227-7202-3.

6.0 SUPPORT SERVICES

If Licensee orders maintenance and support services for the Software, Platform will provide the services described in Schedule A (the "Support Services") on the terms and conditions provided for therein and in this Agreement.

7.0 PAYMENT AND TAXES

In exchange for the rights granted under this Agreement, Licensee agrees to pay amounts due upon receipt of invoice and payable within 30 days unless otherwise specified in Platform's invoice. Licensee agrees to pay accordingly, including any late payment fee. If any authority imposes on the Software or Support Services a duty, tax, or levy, or fee, excluding those based on Platform's net income, then

Licensee agrees to pay that amount, as specified in an invoice, or supply exemption documentation. Licensee is responsible for any personal property taxes for the Software from the date that Licensee obtains it. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Software outside the country in which the original Licensee was granted the license, then Licensee agrees that it is responsible for, and will pay, any amount imposed. All Software is delivered to Licensee F.O.B. Origin.

8.0 OWNERSHIP OF SOFTWARE AND DOCUMENTS

The Software is owned by Platform or a Platform supplier, and is copyrighted and licensed, not sold. The intellectual property rights to the Software are and will at all times remain the property of Platform and its licensors and no right, title or ownership interest of any kind in such intellectual property rights will pass to Licensee, except as specifically provided herein. Any and all moral rights in and to the Software are hereby reserved exclusively to and for the benefit of Platform and/or the Software's individual author(s) of their moral rights in the Software. Platform and its licensors reserve all rights not expressly granted in this Agreement.

Licensee acknowledges and agrees that the Software contains proprietary information of Platform and/or its licensors and may contain trade secrets and confidential information belonging to Platform and/or its licensors. Licensee agrees to keep the Software in confidence and not disclose it to any third party without Platform's prior written consent.

9.0 OWNERSHIP OF DERIVATIVE INTELLECTUAL PROPERTY

Platform may, at its sole discretion, provide Licensee with assistance in installing and configuring the Software (collectively, "Services"). If, during the course of providing Services, Platform creates scripts, develops or modifies the Software or creates any other intellectual property (collectively "Materials"), whether or not at Licensee's suggestion or direction, then all title, right and interest whatsoever (including, but not limited to; copyright, right to create derivative works, patents, trademarks, trade secrets, mask works, moral rights and any other intellectual property or proprietary rights) in all such Materials will vest and remain with Platform. Once Platform has received full payment of the Services fee, Licensee will be licensed to use any such Materials under the same terms and conditions as are contained herein.

10.0 WARRANTY

(a) For a period of sixty (60) days after delivery of the Software to Licensee (the "Warranty Period"), Platform warrants only that the Software will substantially conform to the specifications set out in the Documents provided to Licensee with the Software, when used in accordance with the instructions contained therein. In the event that a material discrepancy between the performance of the Software and the specifications contained in the Documents is brought to Platform's attention by Licensee during the Warranty Period, Platform's sole responsibility, and Licensee's exclusive remedy is for Platform to use commercially reasonable efforts to correct such discrepancy, replace the Software or, in Platform's sole discretion, provide Licensee with a full refund. The warranty applies only to the unmodified portion of the Software. Platform does not warrant uninterrupted or error-free operation of the Software and related Maintenance, or that Platform will correct all Software defects. Licensee is responsible for the results obtained from the use of the Software and related Maintenance.

(b) THESE WARRANTIES ARE LICENSEE'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER

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THESE WARRANTIES GIVE LICENSEE SPECIFIC LEGAL RIGHTS. LICENSEE MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.

11.0 EXPORT and IMPORT

Licensee agrees to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end users or to certain users.

Licensee represents and warrants that Licensee is neither a Prohibited Person nor owned or controlled by a Prohibited Person. "Prohibited Persons" shall mean a person or entity appearing on the lists published on the Internet website of the U.S. Department of Commerce, Bureau of Industry and Security, under the section "Lists to Check"

(<http://www.bis.doc.gov/ComplianceAndEnforcement/ListsToCheck.htm>) as amended from time to time, that is prohibited from acquiring ownership or control of items under this Agreement, or with which Licensee is prohibited from doing business. Without limiting the forgoing, Licensee may not export or use the Software: (I) in Afghanistan, Belarus, Cote d'Ivoire, Cuba, Democratic People's Republic of Korea [North Korea], Eritrea, Guinea, Iran, Iraq, Lebanon, Liberia, Myanmar [Burma], Pakistan, Rwanda, Sierra Leone, Sudan, Syria, Zimbabwe, or any additional countries at <http://www.platform.com/legal-notices>; (II) for the research, development or production of chemical, biological or nuclear weapons, or any missile programs; (III) pertaining to the design, development or implementation of the cryptographic components contained in the Software, modules, interfaces, or architecture of the Software; and/or (IV) in the form of source code or pseudo-code, in any form.

12.0 LIMITATIONS OF LIABILITY

(a) The limitations and exclusions in this Section 12 (Limitations of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver. License and intellectual property indemnification terms that may be included in any of Licensee's other agreements with IBM (such as an IBM Customer Agreement) do not apply to Software licenses granted under this Agreement.

(b) Circumstances may arise where, because of a default on Platform's part or other liability, Licensee is entitled to recover damages from Platform (including fundamental breach, negligence, misrepresentation, or other contract or tort claim). Platform's entire liability for all claims in the aggregate arising from or related to any and all Software and/or Support Services or otherwise arising under this Agreement will not exceed the amount of any 1) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) other actual direct damages, up to the charges (if the Software is subject to fixed term charges, up to twelve months' charges) Licensee paid for the Software or Support Services that is the subject of the claim. This limit also applies to any of Platform's, Enterprises, Software developers, and suppliers. It is the maximum for which Platform and its Enterprises, Software developers, and suppliers are collectively responsible.

(c) UNDER NO CIRCUMSTANCE IS PLATFORM, ITS ENTERPRISES, SOFTWARE DEVELOPERS, OR SUPPLIERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR 3) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED

SAVINGS.

13.0 TERMINATION

Platform may terminate Licensee's license if Licensee fails to comply with the terms of this Agreement. If the license is terminated for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Software. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

14.0 GENERAL

- (a) This Agreement including its applicable attachments is the complete agreement between the parties and replaces any prior oral or written communications between Licensee and Platform. In entering into this Agreement neither party is relying on any representation that is not specified in the Agreement including without limitation any representation concerning: 1) the performance or function of the Software, other than expressly warranted in Section 10 (Warranty) above; 2) the experience or recommendation of other parties; or 3) any results or savings that Licensee may achieve
- (b) This Agreement can only be modified by written agreement signed by authorized representatives of each party.
- (c) Licensee may not assign this Agreement or transfer the rights granted under it without the prior written consent of Platform, which consent may not be unreasonably withheld or delayed. Platform may assign this Agreement to an Enterprise, without notice or prior consent to the Licensee.
- (d) Licensee authorizes Platform, an IBM Company and its parent company International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Licensee's business contact information wherever they do business, in connection with the Software, Support Services and Services, or in furtherance of Licensor's business relationship with Licensee.
- (e) Any notice given by one party to the other will be deemed to be given on: the date it is delivered personally; on the next business day, if sent by fax; or on the next business day following the day shown on the receipt, if sent by registered mail.
- (f) Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement.
- (g) Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- (h) No provision of this Agreement shall be construed against a party because it drafted that provision.
- (i) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of laws thereof. Each of the parties hereto irrevocably: (a) submits to the jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in the Borough of Manhattan, New York City in connection with any claims or disputes arising under this Agreement; and (b) waives its right to a trial by jury with respect to any disputes pertaining to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The parties also agree that their respective rights and obligations hereunder shall be solely and exclusively as set forth herein and that Uniform Computer Information Transactions Act (UCITA), whether enacted in whole or in part by any state or applicable jurisdiction, regardless of how codified, shall not apply to this Agreement and is hereby disclaimed.
- (j) In the event this Agreement conflicts with any terms and conditions affixed to any purchase order, provided within an electronic fulfillment system or otherwise specified by Licensee, Platform's acceptance of Licensee's order and delivery of the Software is solely on the express understanding and condition that this Agreement contains the only terms and conditions that will apply to such order and Platform hereby objects to and rejects any conflicting or additional terms and conditions.

- (k) Platform may sub-contract with any Enterprise, however such sub-contract shall not relieve Platform from any liability for performance.
- (l) Upon reasonable notice, Platform may verify Licensee's compliance with this Agreement at all sites and for all environments in which Licensee uses (for any purpose) Software subject to this Agreement. Such verification will be conducted in a manner that minimizes disruption to Licensee's business, and may be conducted on Licensee's premises, during normal business hours. Platform may use an independent auditor to assist with such verification, provided Platform has a written confidentiality agreement in place with such auditor.
- (m) This Agreement including its applicable Attachments and Transaction Documents is the complete agreement between the parties and replaces any prior oral or written communications between Licensee and Platform. In entering into this Agreement, including each Attachment and Transaction Document neither party is relying on any representation that is not specified in the Agreement including without limitation any representation concerning: 1) the performance or function of the Program, other than expressly warranted in Section 10 (Warranty) above; 2) the experience or recommendation of other parties; or 3) any results or savings that Licensee may achieve. Additional or different terms in any written communication from Licensee (such as a purchase order) are void.

Schedule A Maintenance and Support Services

This Schedule defines the Maintenance and Support Services offered by Platform and the terms, conditions and service levels applicable to such services.

Support Plans. Platform Maintenance and Support Services are available under three levels of support.

- a) Standard: Support available through web portal, email and telephone;
- b) Premium: Includes support provided under Standard Support, as well as an assigned support engineer (“ASE”) with remote access, and the additional services detailed in Section 3.1; and
- c) Mission Critical: Includes support provided under the Premium plan, as well as a technical account manager (“TAM”) to provide a customizable set of services, detailed in Section 3.2, in support of a mission critical environment.

The differences between the Support Plans are further described in this Schedule A and in the Quick Guide to Platform Technical Support Services (the “Quick Guide”) available at *my.platform.com*. Unless otherwise indicated, the Maintenance Services and Support Services that are described below are available under all Support Plans. All Software held by a Licensee must be under the same Support Plan.

1 - MAINTENANCE

- 1.1 **Updates.** Platform shall make Updates of the Software, and any associated documentation, available to Licensee during the Support Services term. Updates include all releases for the Software, from small fixes that are specific to Licensee’s environment up to and including major new releases with new version numbers.
- 1.2 **Notification.** Updates shall be available to Licensee on Platform’s web portal. Licensee may receive notification of any applicable updates directly from Platform, if Licensee has subscribed to receive such notices.
- 1.3 **Sunset Policy.** Platform is committed to providing full support for any version of the Software for a minimum period of five (5) years from the first date of general availability of that version of the Software. Incident Support (defined in Section 2.1), is available only for currently supported versions of the Software. Not less than one (1) year prior to a version of the Software being retired from support Platform shall post a retirement notice on its web site for that version of the Software. The retirement notice will set out the date on which full support shall expire. For a period of one (1) year following the expiry of full support (the “Sunset Period”), limited Incident Support is still available, and includes; responses to questions, changes to Licensee’s license management server, providing

fixes that are already available, or providing fixes in response to Severity 1 Incidents. Incidents that require the creation of new code, such as feature requests, fixes to newly-discovered defects (other than Severity 1), or any incident support following the end of the Sunset Period, may still be addressed under a professional services engagement with Platform.

1.4 **End-of-Life Policy.** After the Sunset Period, Incident Support on prior versions is available only as a professional services engagement.

1.5 **Interactions with Third-Party Hardware and Software.** Platform tests its Software in combination with third-party software products and on various combinations of hardware and operating system environments. Information about these tested environments is available at *my.platform.com*. A “Stack” comprised of specific hardware, operating system and third-party software, is considered “**Certified**” by Platform, when Platform has tested all components in association with the Software both individually and in combination. In contrast, each individual component of a Stack is considered to be “**Supported**” when Platform has individually tested each component for interoperability with the Software. Any component of a Stack that Platform has not sufficiently tested with its Software for interoperability is considered to be “**Unsupported**”.

2 - INCIDENT SUPPORT

2.1 **What is an Incident.** An Incident arises when: a) the Software does not perform in accordance with its documentation, b) Licensee has a question about the Software that is not answered in its documentation, c) a change is required to Licensee’s license management server, or d) Licensee issues a request for a new feature in the Software. Licensee will be notified when its support request does not involve an Incident and will then be given the option to have the request dealt with as a professional services engagement. Resolutions of problems with respect to Unsupported components of a Stack are obtained through professional services engagements and such problems are not eligible for treatment as Incidents. Response to Incidents will vary depending on whether the Incident occurs in a test, evaluation or Production compute environment. For the purposes of this Agreement, “Production” means the compute environment that Licensee uses for its normal operations and on which it runs its application licenses for the use of its personnel.

2.2 **Access to Support Services.** Table 6.2, attached hereto describes Platform’s support offerings, severity levels, and response times for Supported

environments. References to a “Qualified Contact” mean a person who is technically competent and understands the Licensee’s compute environment. Requests to Platform Support that are not from Qualified Contacts may require Platform to designate additional support resources to Licensee, which may be billable to Licensee as a professional services engagement. Other than during a transition period, Platform will provide Incident Support for one (1) version of the Software that is being used by Licensee in Production. During a transition period Platform will provide Incident Support with respect to up to two (2) versions of the Software that are being used by Licensee in Production. Support for the prior version is available during the reasonable period required to transition to the updated version.

2.3 **Support Services Hours.** Support Services Hours are determined by Licensee’s Support Plan. All references to Business Hours refer to Support availability on Business Days during the hours of 9:00 a.m. to 5:00 p.m. in Licensee’s time zone (as shown on Licensee’s Support Order). “Business Days” refer to Monday through Friday, excluding statutory holidays, at Licensee’s Qualified Contact’s location. Support Services Hours for each Support Plan are shown in Table 6.2.

2.4 **Support Portal.** The Support Portal provides Licensee’s Qualified Contacts with a structured means of reporting, and tracking Incidents and related Resolution activities. The Support Portal is available 24 hours per day, 7 days per week (“24x7”) subject to scheduled maintenance, or unscheduled service interruptions.

2.5 **Primary Administrator.** Whenever there is more than one (1) Qualified Contact, Licensee shall identify one (1) Qualified Contact as the “Primary Administrator”, who shall be the principal liaison from Licensee to Platform in relation to Support Services. Where there is only one (1) Qualified Contact, that person shall be the Primary Administrator. The Primary Administrator is responsible for the following:

- a) Licensee’s compliance with the “Licensee Responsibilities” as provided for herein;
- b) Avoiding duplicate submission of Incidents;
- c) Facilitating knowledge transfer within Licensee’s organization relating to incoming and resolved Incidents;
- d) Coordinating Licensee’s Incident resolution priorities; and
- e) Coordinating escalation within Licensee and escalation of requests to Platform in relation to any Support Services issues.

2.6 **Incident Management.**

a) Reporting and Communication. The primary method for initial reporting and submission of Incidents is through the Support Portal, which can

be accessed by Qualified Contacts through the Internet, using a Web browser. Telephone support is also available. Platform’s Support Hotline is the best method to get quick response for Severity 1 Incidents outside of Business Hours. In logging an Incident, the Qualified Contact shall provide sufficient information to allow Platform to reproduce the Incident and identify the non-conforming functionality which includes: information relating to Incident symptoms, basic diagnostic data and information about the Software and its use by Licensee. The Qualified Contact shall also assign a Severity Code to the Incident. Support Tickets logged by Licensee’s Qualified Contacts without a Severity Code shall be treated as Severity 3 by default. The Severity Codes are detailed in Section 6.1.

Platform’s Support Desk is responsible for coordinating and monitoring the Resolution of all Incidents (the term “Resolution” is further defined at Section 2.6(f)).

The number of permitted contacts at each of Licensee’s major sites for each Support Plan is as follows:

Standard:	Up to three (3) Qualified Contacts
Premium:	Up to five (5) Qualified Contacts
Mission Critical:	Up to ten (10) Qualified Contacts

b) Response Commitment. Following initial Incident submission, Platform shall promptly provide the Qualified Contact with a confirmation of receipt of submission. Following the initial internal review of the Incident, the Qualified Contact will receive a direct response from the Support Desk representative assigned to the Incident, within the response times set out in Table 6.2. This response shall include a request for further information, when required, and a confirmation of the commencement of Resolution activities.

c) Severity Code Assignment. The Support Desk representative shall confirm whether the Qualified Contact has assigned the appropriate Severity Code to the Incident (or assign a code if none was provided by the Qualified Contact). In the event that the conditions relating to a logged Incident materially change such that the Incident subsequently meets the criteria of a higher or lower Severity Code, then such Incident shall be re-classified by Platform as such, with notice to the applicable Qualified Contact, and shall then follow the Response Time of: (i) a higher Severity Code, upon Platform’s receipt of Licensee’s written notice reasonably requesting such a change; or (ii) a lower Severity Code, which Platform may reasonably deem as a result of Platform’s and Licensee’s Resolution activities or a reasonable workaround.

d) Assessment and Work Plan. The Support Desk representative shall promptly initiate detailed

Incident assessment activities. Upon request of the Licensee as per Table 6.2, Platform shall provide the Qualified Contact with a work plan to produce a Resolution for the Incident. In the event that Licensee has not provided sufficient information, the Work Plan will include a request for the missing information.

e) **Prioritization.** Unless otherwise directed by the Primary Administrator, Platform shall attend to each of Licensee's reported Incidents based upon the level of its Severity Code and, for Incidents of the same Severity Code, based upon the order in which each Incident was reported.

f) **Resolution.**

(i) Platform shall provide Resolutions to all submitted Incidents as soon as reasonably possible.

(ii) Licensee shall co-operate promptly with Platform in the investigation, diagnosis and Resolution of Incidents. This shall include, Licensee responding in accordance with timelines articulated in the Quick Guide, to Platform's requests for information or action relating to an Incident. Platform shall work with Licensee to determine the appropriateness of workarounds or patches to reported Incidents, as necessary.

(iii) Incidents that cannot be resolved promptly by the Support Desk representative may be assigned or escalated to other specialized groups within Platform in addition to the support specialists.

(iv) When an Incident has been resolved, the Support Desk shall ensure that the Incident records are complete and accurate, and that the Resolution is agreed upon by the appropriate Qualified Contact.

2.7 **Incremental Services.** Platform offers additional services to assist in some or all of the following activities, under professional services.

- a) consulting services;
- b) hosting services;
- c) on-site activities;
- d) performing an installation, configuration or upgrade;
- e) monitoring or auditing;
- f) tuning, optimization or performance enhancement;
- g) development or enhancement of Licensee-specific customizations, outside of changes to the Software;
- h) accelerating a requested enhancement to an earlier version than planned under Platform's product roadmap, or back-porting a requested enhancement to a version prior to the current version;
- i) education or training;
- j) correction of improper Licensee installation of, changes to, or use of the Software;
- k) services with respect to Software operating with unsupported components; and

l) activities outside of the Support Services Hours in Table 6.2.

Licensee will be notified when its service requests involve Incremental Services and are not Incident Resolutions. Licensee will be given the option to have their request dealt with as a professional services engagement, upgrade to a higher level of Support Services, or to withdraw the service request.

3 - SUPPORT AVAILABLE UNDER PREMIUM AND MISSION CRITICAL SERVICES PLANS

3.1 **Premium Support.** In addition to the services offered under Standard Support, Premium Support provides accelerated resolution process, facilitates easy access to Platform's technical expertise, and saves Licensee's effort in managing the computing environment. The additional Support Services that are available under Premium Support include:

- a) an ASE who is the direct liaison from Platform to Licensee for accelerated escalation and time to resolution of Incidents;
- b) regularly scheduled status calls to review Licensee's Incidents by corrective activity, status and action plan;
- c) maintenance of an in-house profile similar to Licensee's environment and workload patterns to streamline and expedite Incident investigation;
- d) remote health monitoring of Licensee's computing environment during a critical change (e.g. Software upgrade) by Licensee;
- e) remote access to Licensee's environment for direct Severity 1 Incident investigation with Licensee's permission;
- f) coordination of all the Incidents reported from Licensee's multiple global sites and regularly scheduled calls with the Licensee's global Qualified Contacts; and
- g) direct support to Licensee's application developers for the Incidents arising during their application integration.

3.2 **Mission Critical Support.** In addition to the services provided under Standard Support and available under Premium Support, Mission Critical Support consists of a suite of Support Services that provide the highest levels of support and care for the Licensee. Designed for flexibility, Mission Critical Support blends essential business continuity services with an array of customized options to provide the right level of care for Licensee's business. Some examples of the customized services options are:

- a) a TAM who is the point of contact and provides proactive project management for Licensee's critical Incidents and computing environment changes;
- b) keeping track and reporting status of all the Licensee's critical Incidents and enhancement requirements;
- c) facilitating direct access to Platform's product

- d) development teams;
- e) remote weekend standby during a critical change (e.g. Software upgrade) by Licensee;
- f) daily status calls for business critical and non-Production technical Severity 1 Incidents;
- g) 24x7 hotline support for Licensee's Severity 1 Incidents on UAT (User Acceptance Testing) platforms as well as on Production platforms;
- h) reviewing Licensee's plan or run book prior to a major upgrade or significant environment change; and
- i) facilitating and tracking custom engineering requests to implement Licensee specific enhancement within the Software.

4. EXTENDED SUPPORT SERVICES - SERVICES NOT COVERED UNDER STANDARD, PREMIUM OR MISSION CRITICAL SUPPORT

4.1 **Extended Services.** Extended Services extends the support offered on Platform's proprietary products to support for third-party software and operating systems on which the Software is being used. Extended Services consists of customizable components outside of the support coverage provided under Standard, Premium or Mission Critical Support, as selected by Licensee in an applicable purchase order. Extended Services is billable as a professional service on a time and materials basis. Only Qualified Contacts are entitled to subscribe for and be the primary contact for Extended Services. Further descriptions of Extended Services can be found in the Quick Guide.

Examples of Extended Services include providing support in respect of:

- a) Licensee infrastructure (e.g. hardware, network, etc.);
- b) Third-Party components that were not licensed by Platform to Licensee;
- c) Licensee's operation of the Software in an Unsupported environment;
- d) Proactive monitoring and/or tuning of application performance; and
- e) Release management to assist with the installation and deployment of Software Updates.

4.2 **Pre-Approved Extended Services.** Pre-Approved Extended Services provides a mechanism for Platform to provide a limited amount of Extended Service without obtaining additional approvals, but only up to a pre-set limit. Pre-Approved Extended Service is available only if Licensee subscribes to Premium or Mission Critical support, and elects to receive pre-approved Extended Service. The amount of Pre-Approved Extended Service for each Severity level is as follows:

- S1 - 16 hours;
- S2 - 8 hours;
- S3 - 4 hours;
- S4 - 4 hours.

Platform shall notify Licensee to secure prior written approval in the event that the effort to provide Extended Service is expected to exceed the pre-approved limit(s) set out above for any request. Any Extended Services provided by Platform in excess of the Pre-Approved hours for Extended Service for any given Incident, in the absence of prior written approval, shall not be billable hereunder. Email approval from Licensee's Primary Administrator shall be considered an acceptable form of written approval.

5. LICENSEE RESPONSIBILITIES

5.1 **General.** Licensee shall follow the reasonable operational requirements as provided in the Quick Guide, to the extent that such guidelines are consistent with the terms of this Agreement. The Quick Guide includes the following sub-headings under Licensee's Role in Incident Resolution:

- a) **Compute Environment.** In order to address certain Incidents, Platform may request that Licensee disable or remove non-essential software from some applicable servers, and/or upgrade hardware, network, or third-party components.
- b) **Remote Access.** In order to investigate certain Incidents, Platform may request that Licensee provides VPN or other high-speed connectivity, with read-only access to Licensee's Production application environment and read-write access to Licensee's test application environment. Certain remote administration software such as PC-Anywhere, Microsoft NetMeeting, or an alternate may be required.
- c) **Fixes and Patches.** Licensee shall meet all reasonable infrastructure requirements, and shall install recommended, applicable fixes and patches, to ensure continued supportability, within six (6) months after their release by Platform.
- d) **Training.** Licensee shall ensure that for large compute clusters, the Primary Administrator attends approved training (both Software training and administration training, where available) conducted by either Platform trainers, or by Licensee's trainers who have been certified by Platform to provide training on the Software.
- e) **Incident Identification.** Prior to reporting each Incident to Platform, Licensee shall investigate to determine whether the Incident is (or is likely to be) with the Software or with Licensee Modifications, Licensee-specific data, hardware, network or third-party components.

6. Service Levels and Responses

6.1 Severity Levels: The severity level assigned to an Incident will fall under one of the following designations:

- a) **Severity 1 (S1) (Critical):** A catastrophic problem of the Software resulting in Production downtime (e.g. crash or hang) where there is no workaround or solution to the problem and where the problem is caused by the complete inability to use the Software, or a major functionality of the Software across a significant portion of the Licensee's Production environment.
- b) **Severity 2 (S2) (Serious):** A high-impact problem that materially limits the ability to use a major functionality of the Software, or that causes a material inability to use the Software for a small or non-critical portion of the Licensee's Production environment, and where **there is no workaround or** solution to the problem.
- c) **Severity 3 (S3) (Medium):** A medium-to-low impact problem that limits the ability to use a major functionality of the Software where a workaround exists; or that materially limits the ability to use a non-critical functionality of the Software.
- d) **Severity 4 (S4) (Minor):** These are Incidents of minor functionality defects, informational requests, or product enhancement requests.

6.2 Responses. The response times and actions for each severity level are shown in Table 6.2, attached at the end of this Agreement. The response times and actions vary depending upon the Support Plan to which Licensee has subscribed.

6.3 Target Response Times. Due to the potentially unique nature of any support problem, the response times set forth in this Agreement constitute the targeted goals of the Support Services to be provided. Platform shall use all reasonable commercial efforts to meet the target times. Sporadic failures to meet these targeted times shall not constitute a failure by Platform to perform a material provision of these Support Terms.

7. GENERAL

7.1 Initial Term. The initial term of Support Services shall commence upon receipt by Licensee of an email containing the license key for the Software to which these Support Terms relate and shall continue for a period of one (1) year (a "Term"), unless Licensee orders additional Terms of Support Services.

7.2 Renewal Terms. Unless otherwise terminated, the term of Support Services may renew for successive periods of one (1) or more years on each anniversary date of the then current term (the "Renewal Date"). Platform shall send Licensee a renewal notice on or about sixty (60) days prior to the Renewal Date, and Licensee shall confirm its intent to renew with payment due thirty (30) days

prior to the Renewal Date.

7.3 Termination or Revision. Licensee shall be entitled to terminate Support Services or to revise the level of Support Services for the period commencing on the Renewal Date, by providing written notice to Platform not less than sixty (60) days prior to the Renewal Date.

7.4 Service Upgrades. Licensee may upgrade to a higher service level during a services Term, upon request to Platform, and upon Platform's confirmation that resources are available to provide such upgraded service. The upgraded service will be provided at the incremental cost ascribed to such service, from Licensee's current service level.

7.5 Service Update. Should Licensee allow its Support Services to lapse and subsequently decide to reinstate them, Licensee shall be responsible for payment of Support for the upcoming year, plus an update fee for the period for which it was off support. If support was terminated for one (1) year or more, then Licensee shall be required to pay the prior twelve (12) months that the Licensee declined support, plus fifty percent (50%) of the fee for each prior year that the Licensee declined support. Platform reserves the right to require a billable 'system health check' to ensure that Licensee's Software is in a supportable state prior to reinstatement.

7.6 Fees. Platform may increase Support Service fees on each Renewal Date by an amount not to exceed five percent (5%) of the support fee currently being paid, but only to the extent that such increases are applicable to other Platform customers in similar circumstances to Licensee.

7.7 Suspension of Services. In the event that Licensee has failed to pay undisputed Fees for Support Services in accordance with the terms of this Agreement, Platform shall be entitled to suspend the provision of Support Services hereunder until such overdue amounts are paid in full by Licensee.

7.8 Language. Unless otherwise specified, Platform shall provide Incident Support described herein in English.

7.9 Outsourcing. In the event that Licensee decides to outsource its compute infrastructure to a third-party, Licensee shall notify Platform and the third-party outsourcer shall sign an Agreement to the effect that it shall use the Platform Software solely for the permitted uses identified in this Agreement. If the third-party will not be contacting Platform directly for support, the support terms in effect at such time between Platform and Licensee will remain unchanged. However, in the event that the third-party desires to contact Platform directly on behalf of Licensee, then it will be required to have its own Qualified Contacts.

Table 6.2: The response times and actions for each severity level

Severity Level	Support Plan	Initial Response	Work Plan Available upon request, following initial resolution period, if resolution not achieved.	Status Updates
S1 (Critical)	Standard	1 hour on a 24x7 basis through telephone, for Production environment only	2 hours after an initial resolution period of 4 hours	Daily update through Web Portal, Email or telephone
	Premium	1 hour on a 24x7 basis through telephone, for Production environment only	To be provided by the ASE within 2 hours after an initial resolution period of 4 hours	The ASE will have daily status call with the Qualified Contacts
	Mission Critical	1 hour on a 24x7 basis through telephone, with an option to extend from Production systems to UAT systems as well	To be provided by the TAM within 2 hours after an initial resolution period of 4 hours	The TAM will have daily status call with the Qualified Contacts
S2 (Serious)	Standard	2 Business Hours	2 Business Days after an initial resolution period of 1 Business Day	Weekly update through Web Portal, Email or telephone
	Premium	2 Business Hours	To be provided by the ASE within 2 Business Days after an initial resolution period of 1 Business Day	The ASE will provide weekly status update to the Qualified Contacts
	Mission Critical	2 Business Hours	To be provided by the TAM within 2 Business Days after an initial resolution period of 1 Business Day	The ASE will provide twice weekly status updates to the Qualified Contacts
S3 (Medium)	Standard	12 Business Hours	3 Business Days after an initial resolution period of 2 Business Days	Weekly update through Web Portal, Email or telephone
	Premium	12 Business Hours	To be provided by the ASE within 3 Business Days after an initial resolution period of 2 Business Days	The ASE will provide weekly status update to the Qualified Contacts
	Mission Critical	8 Business Hours	To be provided by the ASE within 3 Business Days after an initial resolution period of 2 Business Days	The ASE will provide weekly status update to the Qualified Contacts
S4 (Minor)	Standard	24 Business Hours	5 Business Days after an initial resolution period of 3 Business Days	Available by Web Portal
	Premium	24 Business Hours	5 Business Days after an initial resolution period of 3 Business Days	Quarterly
	Mission Critical	12 Business Hours	5 Business Days after an initial resolution period of 3 Business Days	Bi-monthly