NTT DaTa
Trusted Global Innovator

Product Support

Software Maintenance Contract

Concluded by and between

Company
Address
Postal code - City
(subsequently referred to as "Customer")

and

NTT DATA Deutschland SE
Hans-Döllgast-Straße 26
80807 München

(subsequently referred to as "NTT DATA")

NTT DATA Contract No. ....
Contract Commencement: ....

1 Subject of Contracts / Services

Following software producers are included in the NTT DATA product support:

- BMC Software
- Derdack
- Dynatrace
- Tripwire

With regard to the software products delivered and licensed by Software Producers, which are listed on the Maintenance Addendum referring to this contract (Annex 1), NTT DATA shall render the maintenance services listed below. Subject of this contract is only maintenance. NTT DATA does not owe the customer any other services under this contract than those described hereunder.

NTT DATA shall render the following services:

1.1 Troubleshooting

1.1.1 Telephone advice and telephone support in case of malfunction in the software subject to product maintenance reported in detail by the customer.

In order to be able to provide the most efficient consultation possible, reports must be made by Customer via e-mail, Web or fax, but in any case in written form.

1.1.2 Troubleshooting of software defects described in detail and in a reproducible manner by Customer, by delivery of workaround solutions or software patches and follow-up releases provided by the Software Producer.

1.1.3 The following services are not part of this contract:

- Change of the software code

- Development of bypass solutions and workarounds

- Development of patches and fixes for the software

1.2 Update and Purging Service

1.2.1 NTT DATA shall, upon Customer request and without charging any further fees, deliver new releases and/or versions, error recoveries or amendments (hereinafter referred to as "Updates") for software, which has been developed by Software Producer and made available for NTT DATA and has been generally released for other Customers. The choice of medium remains with NTT DATA. The installation of these updates does not form part of the maintenance contract, but may be requested separately, while these services shall be provided as described in point 4.3. The installation services must be reimbursed separately in correspondence to the latter's current daily rates. NTT DATA provides existing descriptions of new developments in the respective software, upon Customer request and if available.

1.2.2 Upon Customer request, NTT DATA shall issue new licensing keys for Software Producer products if supported by the Software Producer. This may be necessary, for instance, in case of hardware portings (Purges).

2   Definitions

2.1   "Malfunction" and/or "error" describes a problem, which results to the fact that, the respective software does not substantially work in accordance with the product specification.

2.2   "Version" describes a specific re-edition of the software that contains substantial improvements or functional enhancements. A version is generally defined by the number preceding the decimal point (e.g. V1.x or V2.x).

2.3   "Release" describes the delivery of bug fixes (workaround solutions or software patches) and/or minor functional enhancements of a software product which are, however, generally consistent with the replaced product release and is marked with the same product number. A release is generally defined by a number following the decimal point (e.g. Vx.1 oder Vx.2 oder Vx.2.2).

2.4   Error classification

To assess the urgency, error notifications made by Customer must describe the impact of the respective defect by using the NTT DATA classification scheme:

2.4.1   Critical

The software cannot be used, because it does not fulfil the guaranteed features and functions, thus leading to a critical situation in the operational business. There is no known workaround solution.

2.4.2   Serious

The software can be used yet only to a very limited extent, because essential functions are not fulfilled properly thus leading to interferences in the operational business. A workaround solution is known but not recommended.

2.4.3   Medium

The use of the software is hindered, but this does not substantially constrain the operational business.

2.4.4   Minor

The software shows slight deviations from the product specification, but the operational business remains practically unaffected.

3 Customer Obligations

The maintenance of the respective software within the framework of this contract is subject to the following conditions.

3.1 Customer fully accepts Software Producer's Support Conditions.

- BMC Software:
  https://www.bmc.com/support/resources/bmc-product-support-policy.html.

- Derdack:
  https://www.derdack.com/de/enterprise-alert-alarmierungssoftware/technischer-support/

- Dynatrace:
  https://assets.dynatrace.com/global/support/policy/dynatrace-support-policy-2017-07v1.pdf

- Tripwire:
  https://www.tripwire.com/customers/support-policy/tripwire-enterprise-platform-support

3.2 Customer agrees that maintenance shall be carried out only and exclusively by NTT DATA or by persons authorized thereto by NTT DATA in writing.

3.3 Customer ensures that any supplied or provided aids, such as data carriers, documentation, etc., are available, to the extent that these are necessary or helpful for the performance of the services.

3.4 Upon request of NTT DATA, Customer is obliged to support and assist NTT DATA to a reasonable extent in the performance of its support services. Therefore, Customer shall nominate a skilled contact person (e.g. administrator) who shall be at NTT DATA's disposal for any questions arising in this context, who is entitled and qualified to provide NTT DATA with any information possibly required for the maintenance and whose information, given within the framework of this Contract's performance, is binding for Customer.

3.5 Customer shall ensure that on the entire system on which the respective software is used, backup copies of the complete data stock are made, at appropriate intervals, but in particular prior to maintenance work, in machine-readable form.

3.6 Customer undertakes to employ the software, as changed or supplemented by NTT DATA by means of workarounds, patches or releases, and to use it in accordance with the applicable terms of the aforementioned Producer Software License.

3.7 Customer will immediately notify NTT DATA of the occurrence of any errors or malfunctions and will forward to NTT DATA any information required to reproduce and analyse these defects. This obligation includes in particular the description of the circumstances and the steps taken, which eventually lead to the occurrence of the defect, as well as the provision of any log or configuration files.

4   Maintenance availability

4.1   The services under this Contract are rendered on working days from Monday to Friday from 09:00 a.m. to 05:00 p.m. These times are defined as "availability time". Services performed outside these times are to be agreed separately and are to be remunerated additionally.

4.2   A NTT DATA's support specialist will contact customer within 8 availability hours after the receipt of the specified (see Section 3.7) defect notification (reaction time).

Within the agreed upon reaction time during availability time, NTT DATA will begin with the trouble shooting and, where this is already possible, with the recovery of the defect reported by Customer. The final error recovery will be carried out within an adequate period of time. Thereupon, the respective correction in the form of software patches/fixes, configuration instructions and/or references to producer information will be forwarded to Customer.

4.3   NTT DATA will render the services owed to Customer under this Contract only remotely. If, however, upon Customer request maintenance is to be performed by NTT DATA on site, the customer must explicitly commission NTT DATA with this service and remunerate it in accordance with the currently applicable daily rate.. Only the hours actually worked shall be invoiced. Business trips to Customer's site shall be charged separately (travel costs, other incurred expenses, travel time is considered working time). For safety reasons it is necessary that an employee of the Customer, familiar with the software, is present on the installation spot while NTT DATA carries out the required maintenance.

4.4   At its own discretion, NTT DATA is entitled to have services owed to Customer under this Contract also performed by experienced third parties, commissioned by NTT DATA for this purpose. Additional costs possibly arising therefrom shall be borne by NTT DATA.

4.5   Contact details

E-Mail   support_ITSM_BMC@NTTDATA.com

Web   https://myit.at.nttdata-emea.com:8443/ux/myitapp/   -> Support Center

Support Manager on Duty:

E-Mail   manager_support_ITSM_BMC@NTTDATA.com

NTT DATA Deutschland SE

Address   Hans-Döllgast-Straße 26

                80807 München Deutschland

Tel   +49-89-9936-1666

NTT DATA Deutschland SE – Location in Vienna

Address   Rivergate
                Handelskai 92
                1200 Wien, Österreich

Tel   +43 1 253099-100

NTT DATA Deutschland SE – Location in Bern

Address   Schanzenstraße 4
                3006 Bern, Schweiz

Tel   +41-58-4331120

Services not included

Maintenance services covered by this Contract do not include:

5.1 Consulting and support in connection with software that is not licensed nor listed in the maintenance addendum.

5.2 Consulting and support for modified or non-standard versions of the respective Software Producer.

5.3 Expenses in terms of time and effort, spent for trouble shooting in the area of interfaces to hardware devices, operating system software, database software and/or third-party software, which are not part of the software of the Software Producer.

5.4 Support necessary for debugging defects caused by unqualified interferences on the part of third parties or of the Customer, by software contamination with computer viruses or by external influences such as strokes of lightning, hardware defects etc.

5.5 Support necessary for debugging defects caused by the fact that the software is used on or in combination with hardware other than that for which it is explicitly suited, according to the documentation handed over to Customer.

5.6 Installation of new versions, releases and patches of the respective software.

5.7 Services under this Contract, which NTT DATA is unable to render due to facts or circumstances for which NTT DATA is not responsible, in particular if the Software Producer does not provide solutions for problems/bugs.

6   Term of Contract

6.1 This Contract and the associated maintenance addendum shall come into force upon signing by Customer and countersigning by NTT DATA.

6.2 The term of Contract shall initially be one year. Hereafter, the Contract will automatically and periodically be renewed for another year (maintenance/contract period), unless one of the contracting parties terminates the contract in writing at least one month before the end of the contract period.

6.3 In the event that further products of the software producer should be ordered within an already existing maintenance period, the maintenance period for these products will start from the date of provision of the product and/or the notification of the products' provision. The end of the maintenance period of the first ordered product will apply to all maintenance periods. Upon the end of this maintenance period all maintenance agreements will be renewed collectively and simultaneously in accordance to sec. 6.2.

6.4 Any termination of individual licenses is only possible to the end of the maintenance period and only after clarifying any conflicting dependencies (e.g. server – user or suite – application – user) with NTT DATA.

6.5 If one contracting party becomes incapable of action before the completion of the Contract, the other party may withdraw from the Contract.

6.6 The contracting parties explicitly waive a termination of this Contract prior to the expiry of the aforementioned term of contract. However, this waiver shall not affect the indispensable right to a termination for reasonable cause. Reasonable causes are in

particular the incapability of action of the other contracting party or the intentionally or grossly negligent violation of contractually agreed obligations.

6.7   If one of the contracting parties wishes to dissolve the Contract for other reasons, it shall be deemed dissolved by the acceptance of the declaration according to the conditions following hereunder.

In the event of early dissolution of the Contract for other reasons, the other party shall be entitled to the full maintenance fee for the remaining term, irrespective of the occurrence and proof of any damage it has suffered or of any fault by the dissolving party, which would have been incurred for the remaining term without early dissolution. If the maintenance fee has already been fully paid at the beginning of the maintenance period, there is no claim for the refund of the maintenance fee.

This also applies to maintenance Contracts with a term of Contract of more than one year, which were not paid by Customer in advance at the beginning of the maintenance period for the entire term of Contract. If one of this contracts is terminated, NTT DATA will receive the full fee which would have been incurred for the respective remaining term of Contract.

6.8   NTT DATA may terminate the Contract at any time by giving written notice of 30 days, provided that:

- Additional service effort has incurred due to the fact that software has been improperly handled or modified either by Customer or by third parties;

- Maintenance is significantly impeded by changes in the software initiated by the Customer or by connecting hardware or software not supplied by NTT DATA. This shall not apply to cases in which NTT DATA has given its prior written consent to the changes or connection;

- Customer does not properly fulfil his obligations under sec. 3;

- Measures taken after sending a written reminder for delayed payment still remain ineffective

7   Maintenance fees and terms of payment

7.1   Customer shall pay the agreed maintenance fee for the services rendered by NTT DATA within the framework of this Contract.

7.2   The maintenance fee for the first maintenance period is defined in the maintenance addendum annexed to this Contract or in the respective offer.

7.3   Unless otherwise specified in the maintenance addendum or the respective offer, the agreed maintenance fee shall apply for one year. After that, NTT DATA is entitled to adjust the fees. In the event the maintenance fee is to be adjusted for the following maintenance period, NTT DATA shall inform Customer hereof in written form upon renewal of the Contract thereby stating the new amount of the maintenance fee. Unless Customer informs NTT DATA within two weeks after receipt of such notice at the latest, that he does not wish to renew the Contract, the new maintenance fee shall apply as stated in the abovementioned notice.

7.4   All fees do not include V.A.T. V.A.T. in the amount of the respectively valid statutory rate as well as all other taxes and duties levied in connection with the maintenance fee, are borne by the Customer.

7.5   All extra services, rendered in addition to the standard conditions, will be invoiced separately. The remuneration for such services is based on the latter's current daily rates.

7.6   Customer is only entitled to offset any claims of NTT DATA with counter claims, if such counterclaims have either been acknowledged by NTT DATA in written form or have been defined by final enforceable judgement.

8   Warranty

NTT DATA can neither warrant or guarantee that the maintained software can be used without any interruption and free from any defects, nor that, the occurrence of other errors or defects is excluded as a result of the maintenance performed. Therefore, NTT DATA does not assume any warranty, be it expressed or implied, with regard to maintenance services, in particular not for any possible maximum downtimes.

9 Liability

9.1 NTT DATA shall assume unrestricted liability for any damage caused deliberately or by gross negligence, for fraudulent concealment of defects, guarantees, claims under the Product Liability Act, personal injury and for injury to life or health.

9.2 Other than that, NTT DATA shall assume liability only for any damage caused by a breach of duty due to simple negligence, if the fulfilment of that duty is of particular significance to achieve the contractual purpose (cardinal obligation), and if the damage was typical and foreseeable. This applies mutatis mutandis for a breach under the law of torts.

9.3 In cases pursuant to sec. 9.2, the liability shall overall be limited to the amount of the yearly maintenance fee or of Euro 1 Million, whichever is the lower.

9.4 Subject to sec. 9.1 and 9.2, NTT DATA shall be liable for the recovery of data only if Principal has made risk-oriented backup copies at regular intervals, and has ensured that the data can be recovered from these backup copies with acceptable effort. Any further liability for loss of data is excluded.

9.5 Subject to sec. 9.1 and 9.2, NTT DATA shall not be liable if it is prevented from the correct and timely performance of the contract for reasons beyond its control. The customer also accepts that NTT DATA shall not be liable for damages resulting from the Customer's failure to comply with contractual obligations. Furthermore, any liability of NTT DATA or its vicarious agents for further claims and damages, in particular claims for compensation for indirect, consequential or financial loss, loss of profit, downtime in production, interruption of operations or loss of earnings - irrespective of the legal grounds - is expressly excluded.

9.6 Subject to sec. 9.1 and 9.2, Customer's claims for damages shall lapse after one year, unless a shorter limitation period was agreed. The limitation period starts with the end of the year in which the claim arose and Customer received knowledge of the circumstances justifying the claim and the debtor's person, or could have received knowledge without gross negligence.

9.7 The above provisions shall also apply for the benefit of the employees and vicarious agents of NTT DATA.

10 Protection of intellectual property rights

The rights to all copies, excerpts, improvements and other modifications of the software or of parts thereof, which NTT DATA leaves with the Customer within the framework of this Contract, remain with NTT DATA and/or the respective Software Producer. Without the consent and authorisation of NTT DATA, copies cannot be handed over to third parties. Third parties shall also mean other customers of NTT DATA.

11 Import and Export Provisions

The products distributed and the services performed by NTT DATA are subject to the applicable national and U.S. export regulations.

12 Data Protection

12.1 The parties oblige their employees to observe and comply with the relevant data protection regulations.

12.2 If and insofar as required for the performance of the contract, the parties shall enter into separate agreements on order data processing or, in case of order data processing in third countries, conclude EU Standard Contractual Clauses.

13 Nondisclosure

13.1 The parties undertake to treat confidential, for an unlimited time and especially also after the termination of the cooperation, any and all knowledge of confidential information and business secrets of the other contracting party obtained in connection with the fulfilment of this contract. This includes, in particular but without limitation, technical and other information, data, ideas, inventions, trade secrets and/or know-how as well as other information marked as or obviously confidential.

13.2 The parties are subject to the reciprocal obligation to not disclose any confidential information or confidential material to any third parties and to take all reasonable precautions to protect the confidential character of such information or material. Employees who do not have a need to know any confidential information to perform their duties are also deemed third parties.

13.3 The nondisclosure obligation does not extend to any confidential information and business secrets which (i) are public domain at the time of disclosure or become public domain afterwards without non-compliance with the above provisions being a contributory cause, (ii) are disclosed by either Contracting Party on an expressly non-confidential basis, (iii) were in the Receiving Party's lawful possession already before disclosure or (iv) are disclosed to the Receiving Party afterwards by a third party without a breach of any nondisclosure obligation. The Party invoking any of the above exemptions shall bear the burden of proving its existence.

13.4 NTT DATA is entitled, however, to make use of the content and the fact of the contract in reference lists.

14   Final Provisions

14.1   This Contract supersedes any preceding agreements in this context, as the case may be. For individual matters that go beyond the agreements contained in this Contract, the General Terms and Conditions for Service Contracts of NTT DATA Deutschland SE shall apply (Annex 2). For clients from Austria or Switzerland, the country-specific particularities regulated in the corresponding annexes also apply.

14.2   Any and all contractual agreements, amendments or additions thereto as well as all annexes (maintenance addenda) are only valid in written form, with reference to this Contract and a legally valid signature of both contracting parties.

14.3   Any and all claims resulting from this Contract may not be set off.

14.4   The transfer of this Contract as well as the assignment of rights and obligations under this Contract by Customer are not permitted, without prior written consent of NTT DATA.

14.5   If any parts of this Contract are held to be or become invalid, nothing in this shall prejudice the remaining provisions thereof. The contracting parties agree to cooperate in order to find a regulation which serves the purpose of the Contract as closely as possible.

14.6   The following places of jurisdiction shall apply for all disputes arising in connection with the execution of the contract: For customers from Germany, the place of jurisdiction shall be Munich. For Austrian customers the place of jurisdiction is the competent court in Vienna and for customers from Switzerland the place of jurisdiction is Zurich.

14.7   For clients from Germany, this contract and all its appendices (maintenance certificates) are subject to German law; for clients from Austria, Austrian law and for clients from Switzerland, Swiss law applies.

Annexes:

Annex 1: Maintenance Addendum

Annex 2: General Terms and Conditions for Service Contracts of NTT DATA Deutschland SE

_____   _____

Place & date   Place & date

NTT DATA Deutschland SE   Customer:

represented by: represented by:

_____   _____

Name: Name:

_____   _____

Name: Name: