



## **SUPPORT AND MAINTENANCE (SMA) TERMS & CONDITIONS**

These Support and Maintenance Terms and Conditions ("SMA Terms") are entered into by and between HYBRID Software ("HYBRID") and the Customer ("Customer") and are agreed upon in the Order Confirmation. These SMA Terms apply to the Support and Maintenance Services offered by HYBRID and should be read in conjunction with and are subject to HYBRID's Terms of Sale and the applicable Software License Agreement(s).

The Terms of Sale and the terms of the applicable Software License Agreement(s) take precedence over these SMA Terms.

### **1. DEFINITIONS**

Any capitalized term used in these SMA Terms that is not defined herein shall have the meaning attributed to such term as set forth in section 1 of the Terms of Sale.

**"Agreement"** means the Agreement for the purchase of HYBRID Products or Services consisting of HYBRID's Offer, the Terms of Sale, the Software License Agreement, these Support and Maintenance Terms, and any other document which is incorporated herein by reference.

**"Advanced Customer Support (ACS)"** means additional Support Services beyond Support and Maintenance Services reserved for Customers with an Advanced Customer Support agreement.

**"Business Day"** means Monday to Friday excluding national holidays.

**"Business Hours"** meaning 09 a.m. to 5 p.m. on Business Days in the time zone of HYBRID automatically adjusted to reflect changes to daylight savings time.

**"Incident"** means any event that is a deviation from normal that causes disruption to the Product(s) or could lead to a disruption or a reduction in the quality of the Product(s).

**"New Version"** means any major release of the Product, which incorporates a new feature or features or major enhancement(s) to the features of the Software, and in addition may contain also security updates, Incident corrections, and/or minor changes to the Software. HYBRID may determine in its sole discretion what constitutes a New Version.

**"Problem"** means an unknown cause of one or more Incidents.

**"Response Time"** means the period until HYBRID's confirmation of the reported Incident, from receipt of the information required from the Customer for HYBRID's support team to begin resolution and open a support ticket in HYBRID's systems.

**"Support and Maintenance Services"** the support and maintenance services to be provided by HYBRID as specified in these SMA Terms.

**"Support and Maintenance Service Term"** the defined term for the performance of the Support and Maintenance Services, as agreed in the Order Confirmation.

**"Technical Contact"** refers to the primary contact of the Customer responsible for receiving communications from HYBRID and authorized under the Data Processing Agreement to issue instructions. HYBRID must be informed promptly, at least by email, in the event of a change of Technical Contact.

**"Update"** means a release of the relevant Product containing security updates, Incident corrections, bug fixes, patches, and/or minor changes to the Product.

### **2. COVERED PRODUCT(S)**

The Support and Maintenance Services rendered under the Agreement solely apply to the Product(s) that are explicitly indicated as falling under the scope of the Support and Maintenance Services as defined in the relevant Order Confirmation as of the effective date of the Agreement and are provided for the agreed Support and Maintenance Service Term. During the Support and Maintenance Service Term, Customer may request to add Products covered, subject to HYBRID's consent and agreement on the applicable additional Support and Maintenance Fees.

### **3. SUPPORT AND MAINTENANCE**

During the Support and Maintenance Service Term and in relation to the covered Product(s), HYBRID will provide the following industry-standard Support and Maintenance Services:

#### **3.1 Support Services**

##### **3.1.1 Service Scope**

HYBRID will provide technical support with regard to the covered Product(s). Support will consist of answering questions regarding Incidents and unexpected behavior of the Product(s), notices by the Customer that a Product is not working or substantially fails to perform in accordance with the Documentation, and providing general information, advice, and instructions in connection with the functionality of the supported Product(s).

Customer will be responsible for providing first-line helpdesk support for individual end-users of the covered Product(s), and Customer will be responsible for screening first-line technical inquiries and escalating to HYBRID only those issues that cannot be resolved by the Customer's Technical Contact.



### 3.1.2 Availability (Service Times) and contact

The HYBRID Support Service is available to the Technical Contact and up to three (3) named employees of the Customer during Business Hours. Customer is responsible for keeping the list of named employees up to date and informing HYBRID of any changes as soon as possible. HYBRID will have no obligation to accept calls or requests directly from, or otherwise interact directly with, personnel other than the Customer Technical Contact and the three named employees.

HYBRID provides language support in English during Business Hours. Local language support is also available in Germany, France, Italy, Spain, and the People’s Republic of China.

Support requests can be entered through the HYBRID Support Service ticketing system or via email. the HYBRID Support Service is also accessible via phone during Business Hours for critical Incidents only.

### 3.1.3 Remedial Service / Response Time

If Customer identifies an Incident, Customer will promptly report such Incident in writing to the HYBRID Support Service, specifying

- (a) the nature of the Incident;
- (b) the circumstances under which the Incident was encountered, including the processes that were running at the time that the Incident occurred;
- (c) technical information for the machine upon which the Product was running at the time of the Incident;
- (d) the steps, if any, that Customer took immediately following the Incident; and
- (e) the immediate impact of the Incident upon Customer’s ability to operate the Product.

Upon receipt of such Incident report, HYBRID will evaluate the Incident and classify it in accordance with the Severity Level Table below and respond within the Response Times provided hereafter. After receiving a report of an Incident, HYBRID shall use an appropriate method to provide the Customer with a progress update.

Priorities for Incident resolution are determined on the basis of the consequences for the business processes as judged by HYBRID and divided into three severity levels:

Severity 1 (“Critical”):

- Any (continued) usage of the Product(s) impossible
- User(s) can no longer access the Product(s)
- No workaround available

Severity 2 (“Major”):

- A critical function of the Product is prevented from operating in substantial accordance with the Documentation
- Parts of a business-critical application are not available, do not function properly, or perform badly

Severity 3 (“normal”):

- A Product functions normal but exhibits minor Problems not affecting or hardly affecting the result (e.g. there are minor effects such as performance Problems, graphics are not positioned correctly, or there are issues with displaying data)
- The user(s) can continue but productivity is lowered as a result of the Incident
- The Incident has no immediate consequences for Customer’s business processes
- A workaround is available

| Severity              | Response Time (Business Hours) |
|-----------------------|--------------------------------|
| Severity 1 (Critical) | <3h (90%)                      |
| Severity 2 (Major)    | 2 Business Days (85%)          |
| Severity 3 (Normal)   | 5 Business Days (85%)          |

General support requests will be answered by HYBRID on a best-effort basis and within a reasonable time, taking into account the nature of the support request.

The Response Time is calculated based on the service times during Business Hours. The maximum Response Times vary depending on the severity of the Incident. Requests sent via email will always be initially treated as “Normal” severity.

Customer is required for Incidents with Severity 1 (“Critical”), entered through the HYBRID Support Service ticketing system or via email, to contact the Support Service via phone.



Remedial Service may at HYBRID's discretion be performed by providing a software fix (such as a permanent or temporary patch or workaround), or by providing an Update or New Version that addresses the Problem available to the Customer.

HYBRID shall have the right to utilize the general expertise, technical knowledge, and skills that its and its subcontractors or affiliates personnel have learned in conjunction with the Support and Maintenance Services. HYBRID has also a worldwide, unrestricted, permanent, non-revocable, transferable, sub-licensable, and free-of-charge right to store and use for any and all purposes the suggestions, feedback, and ideas given by the Customer.

### **3.2 Maintenance Services**

Customers subscribing to the Support and Maintenance Services shall be entitled to receive during the Support and Maintenance Term, Updates and New Versions of the covered Product(s) in accordance with HYBRID's normal release schedule.

HYBRID may make such Updates or New Versions available to Customer via electronic means. Updates and New Versions will be made available to the Customer through a designated data center, secure download link, email, or other electronic methods as determined by HYBRID at its sole discretion. HYBRID shall provide the Customer with appropriate access credentials, activation or license keys, or other necessary information required to access, download, and install Updates and New Versions.

## **4. EXCLUSIONS AND ADVANCED CUSTOMER SUPPORT**

### **4.1 Exclusions**

Support and Maintenance Services are provided exclusively and solely for those Product(s) identified within the scope of the Support and Maintenance Services in the Offer.

Notwithstanding anything to the contrary in this Agreement, HYBRID will have no obligation to provide any Support or Maintenance Services to Customer to the extent that such services arise from or relate to any of the following:

- Any hardware or software not provided by HYBRID;
- Products altered, damaged, or modified by Customer or any third party not approved in writing by HYBRID;
- Customer's improper or incorrect handling of the Product(s);
- Use of Product(s) not in accordance with the then-current Documentation;
- Any violation of the Agreement and/or the applicable Software License Agreement, including any breach of the scope of a license grant;
- Modifications made to, services performed, or attempts to repair or restore a Product by anyone other than HYBRID or an authorized reseller or representative approved by HYBRID;
- Products installed on a hardware or operating environment not supported by HYBRID, including, without limitation, the Customer's failure to maintain a suitable operating environment or minimum system requirements as described in the Product documentation ;
- Any Problems or issues with Customer's IT and networking services including SSL certificates and PEM file Problems;
- Any Problems or issues with Customer's proprietary database(s), including, but not limited to, any corruption related to malfunctions caused by Customer's incompatible or obsolete hardware;
- Problems with any third-party software or third-party API's
- The Customer's operating environment being impacted by hacking, malware, ransomware or any other kind of malicious software;
- Use of Products that are not the then current version unless otherwise agreed in writing by the parties;
- Incidents that cannot be reproduced by HYBRID;
- Products that are End Of Life.

Any additional costs incurred by HYBRID caused by the exclusions referred to above shall be charged to the Customer at the then prevailing hourly rate.

Any sandbox, staging environment, release review, beta, education, demo, trial, test, developer and/or debugger accounts, and any other nonproduction or test environments are expressly excluded from Support and Maintenance Services.

### **4.2 Advanced Customer Support (ACS)**

Advanced Customer Support is only available for Customers who have an Advanced Customer Support agreement with HYBRID. The exact scope of Advanced Customer Support shall be based on the Customer's requirements and specific business profile.

The following Support Services are only available under Advanced Customer Support:

- Support Service outside of Business Hours (e.g. weekends) including global 24/7 Support Service



- Support Service of custom developed Products and/or Software
- Hypercare Support
- Dedicated Support channel(s)
- Increased Response Times
- Resolution time targets
- System reviews
- Performance monitoring
- Release guidance
- Solution Architecture
- Implementation support
- Operational support

## **5. CUSTOMER OBLIGATIONS**

Customer is responsible for providing HYBRID in a timely manner with sufficient information that will enable HYBRID to understand and fully reproduce an Incident.

Customer shall at all times provide for (i) adequate remote access to the Product(s), and (ii) in case an onsite intervention is deemed necessary, physical access to the location where the Product(s) are used in order to facilitate the performance of the required Services. In case of an on-site visit, HYBRID's personnel will conform to the Customer's reasonable work hours and security procedures.

The Customer is required to perform routine system and backups as described in the Documentation.

In order to provide the Support and Maintenance Services pursuant to these Terms, modifications by HYBRID may, at HYBRID's discretion, be made to the Product(s). If required, the Customer shall provide access to the Product(s) during regular business hours upon notification from HYBRID that a modification will be incorporated on-site. In case access is refused HYBRID disclaims any liability for providing the Service.

In relation to the Product(s) where dependencies in versioning exist, HYBRID explicitly advises maintaining Products at the same versioning, in particular, in the case of an Update or New Version. In case such advice is not followed by the Customer, the warranties provided for in relation to the affected Product(s) shall be void, and HYBRID disclaims any liability in relation to its failure to perform any of its obligations under these SMA Terms.

## **6. SUPPORT AND MAINTENANCE FEE**

In consideration of the rights set forth herein, the Customer agrees to pay HYBRID the applicable Support and Maintenance Fee ("SMA Fee") as set forth in the Order Confirmation, and any additional costs set forth herein.

The applicable SMA Fee is subject to a yearly revision by HYBRID. HYBRID is entitled to an automatic increase of the SMA Fee of up to a maximum of 5% per annum without prior Customer's consent and effective January 1st of each calendar year. HYBRID shall provide the Customer with ninety (90) days' written notice in case of an increase of an SMA Fee by more than 5%. Furthermore, HYBRID reserves the right to adjust the SMA Fee applicable to any Renewal Term by notifying the Customer of the same at least ninety (90) days prior to the start of a Renewal. In case Customer does not agree to such change in pricing, Customer, as a sole remedy, has the option to cancel the corresponding Service in accordance with the Terms.

HYBRID may charge the Customer for travel and accommodation expenses in case an on-site intervention is required which will only be done upon prior written agreement of the Customer. For travel time, HYBRID's then-current hourly rate shall apply.

The SMA Fee and any additional Service charges due are payable in accordance with the Order Confirmation or as otherwise agreed in writing by the parties, by wire transfer, credit card, or other payment method offered by HYBRID from time to time. If HYBRID offers invoicing as a payment method, invoices are payable within thirty (30) days from the date of the invoice unless otherwise agreed upon as identified in the Order Confirmation.

Without prejudice to any other or further remedy available, HYBRID reserves the right to suspend the performance of any obligation under this Agreement in the event that the Customer has delayed making any payment that is due. With the exception of Force Majeure all objections, remarks, protests, or disputes related to Customer invoices must be reported by a registered letter containing a clear statement of the reasons for the protest and within 15 days of the date of the invoice. After the expiry of the 15 days term, the invoice shall be considered undisputed by the Customer.