

# SOFTWARE MAINTENANCE AND CLOUD COMPUTING SUBSCRIPTION AGREEMENT ADDITIONAL TERMS

Version 20240920

THIS AGREEMENT (“Agreement”) is entered into on the date of the applicable Order Form between Advanced Toolware, LLC, dba Tools4ever (“Vendor”), a Washington limited liability company, with its principal place of business located at 21006 State Route 410 E, Bonney Lake, Washington, 98391 and customer entity listed on the applicable Order Form (“Customer”), with its principal place of business located at located on the applicable Order Form. The Customer agrees to read and abide by the Tools4ever by installation “End-User Software License Agreement” located at [www.tools4ever.com/terms/eusla](http://www.tools4ever.com/terms/eusla).

THE FOLLOWING ADDITIONAL TERMS, ONLY AS APPLICABLE, GOVERN YOUR AGREEMENT(S) FOR USE OF VENDOR’S SOFTWARE AND SUBSCRIPTION SERVICES, AS THE CASE MAY BE, NOTWITHSTANDING ANY CONTRARY TERMS BETWEEN THE PARTIES. THE BELOW TERMS MAY BE MODIFIED ONLY BY A SEPARATE WRITING BETWEEN THE PARTIES.

## 1. SUPPORT AND SUBSCRIPTION SERVICES

Under the terms and conditions of this Agreement, Vendor will provide the following Support and Subscription Services to Customer for the software covered by the Software License Agreement and the specified subscription services. Support and Support Services are defined as assisting customers with software bugs and technical issues, but not product consultancy or support of the software itself. Subscription services are cloud based services provided by the Vendor and Tools4ever Software B.V. Maintenance renewals will not increase more than 5% per year. On request, multiple year renewals are available. Subscription pricing is subject to change upon renewal of your subscription or completion of any specified term, as applicable.

## 2. TERM AND TERMINATION

Vendor may restrict access to Customer data, or suspend or terminate the applicable services if Customer is past due on any Vendor invoice after reasonable opportunity to cure. Note - Future upgrades are only available for new purchases and those with a current maintenance agreement. Maintenance, extended maintenance, and subscription services are for a set term as otherwise provided between the parties. All terms for services shall automatically renew upon expiration for a like term and shall continue accordingly until such renewal term is cancelled by either party as otherwise provided upon the end of the then current billing cycle. Upon expiration, termination, or cancellation of services, Vendor may remove or delete Customer’s data in its ordinary course of business without any duty or obligation to preserve any such data.

Products owned by the Customer, but not supported by an annual software maintenance agreement can access the Vendor toll-free telephone support number to request telephone support on a per-call basis. The standard fee for telephone support on a per-call basis is currently \$225 per call for the first hour, plus any additional time required resolving the problem. For Vendor to accept the request, a purchase order number or credit card is required at the time the call is placed. After the first hour, all calls are billed in 1/2 hour increments.

## 3. REMOTE ACCESS

It is the Customer’s responsibility to disable/remove/delete any login/VPN credentials provided to the Vendor at the completion of the consultancy services or general support.

## 4. DATA COLLECTION

Vendor reserves the right to digitally collect licensing and usage information on Customer’s utilization of Vendor’s products.

## 5. INVENTIONS, DISCOVERIES, AND IMPROVEMENTS

Any inventions, discoveries, or improvements developed by or in conjunction with Customer within a Tools4ever licensed software product shall belong exclusively to Vendor; provided that no proprietary non-public information of Customer shall be included in such ownership. Furthermore, without limitation, Vendor retains all rights and

ownership of all consultancy or development solutions subject to the above limitation regarding the above protected proprietary non-public information.

## 6. INDEMNIFICATION

*Customer* shall indemnify and hold harmless *Vendor* and its affiliates and employees against any damages, losses, claims, judgments, or other liabilities, costs, or expenses of any kind whatsoever (including without limitation penalties, interest, and reasonable attorneys' fees) which may at any time arise or be asserted against *Vendor* by reason of, in connection with, arising out of, or resulting from any breach or nonfulfillment by *Customer* of any provision of this Agreement or any negligent act or omission by *Customer*, or its affiliates, employees, or agents, in the performance of services under this Agreement.

## 7. WARRANTY DISCLAIMER

THE SUPPORT SERVICES, SUBSCRIPTION SERVICES, AND ANY ADDITIONAL SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 8. LIMITATION OF LIABILITY

*VENDOR* WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, DAMAGES RESULTING FROM A HACKER OR OTHER UNAUTHORIZED USE OF *CUSTOMER'S* INFORMATION, EVEN IF *VENDOR* HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM. IN NO EVENT WILL *VENDOR'S* TOTAL LIABILITY FOR ANY DAMAGES, DIRECT OR INDIRECT, INCURRED IN CONNECTION WITH THIS AGREEMENT EXCEED THE SUPPORT OR SUBSCRIPTION FEES RECEIVED BY *VENDOR* FROM *CUSTOMER* FOR THE THEN CURRENT TERM OF THIS AGREEMENT. *CUSTOMER* ACKNOWLEDGES THAT THE SUPPORT AND SUBSCRIPTION FEES REFLECT THIS ALLOCATION OF RISK.

## 9. DISPUTE RESOLUTION

If a dispute arises out of or relates to this Agreement and if the dispute cannot be settled through negotiation, the parties agree to first spend at least eight (8) hours attempting to settle the dispute through mediation administered by the American Arbitration Association in Seattle, WA (206-622-6435) under its Commercial Mediation Rules, each party responsible for one half of the costs. In the event no resolution can be reached, the dispute shall be resolved pursuant to binding arbitration or court action. If *Vendor*, in its sole discretion, decides to seek injunctive relief it can waive the above mediation requirement unilaterally in order to do so. All statutes of limitation applicable to actions in Washington courts shall apply for all purposes.

## 10. GOVERNING LAW, VENUE, AND JURISDICTION

The laws of the State of Washington, excluding conflicts of law rules, will govern this Agreement. The UN Convention on Contracts for the Sale of Goods will not apply. Venue and jurisdiction of any legal action shall exist exclusively in the state or federal courts in Pierce County, Washington, unless injunctive relief is sought by *Vendor*, and, in *Vendor* judgment, may not be effective unless obtained in some other venue.

## 11. ASSIGNMENT

This Agreement may not be assigned by *Customer* without *Vendor's* prior written consent.

## 12. COMPLETE AGREEMENT

This Agreement (collectively all specific terms and these Additional Terms) constitutes the entire and final agreement between the parties in connection with the applicable services and supersedes any prior agreement or documentation concerning the applicable services.

## 13. BINDING EFFECT

This Agreement shall inure to the benefit and bind each of the parties and their respective successors and assigns.

## 14. ACKNOWLEDGEMENT

*Customer* acknowledges that he/she/it has read this Agreement and has been afforded the opportunity to discuss and review this Agreement with attorneys of his/her/its choice, and that copies of this Agreement were provided to him/her/it prior to execution of this Agreement.



## 15. FEES AND COSTS

In the event of legal action arising out of this Agreement, the prevailing party in such legal action or proceeding shall be entitled to an award of costs and reasonable attorney fees in addition to any other relief awarded.

## 16. SEVERABILITY

If any provision of this Agreement is held or deemed to be invalid or unenforceable to any extent when applied to any person or circumstance, the remaining provisions hereof and the enforcement of such provision to other persons or circumstances, or to any other extent shall not be effected thereby, and each provision hereof shall be enforced to the fullest extent allowed by law.

## 17. CAPTIONS AND HEADINGS

The captions and headings throughout this Agreement are for convenience and reference only. The words contained in the captions and headings shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any paragraph or the scope or the intent of this Agreement.

## 18. SERVICE LEVEL AGREEMENT (SLA)

*Vendor* commits to providing timely support to *Customer* as outlined below:

- **Response Time:** For all support tickets submitted by *Customer*, *Vendor* will respond by the next business day. A business day is defined as Monday through Friday, excluding recognized holidays.
- **Ticket Submission:** Support tickets can be submitted via the designated support email or ticketing system as specified by *Vendor*. Each ticket must contain relevant details to ensure prompt assistance.
- **Escalation Procedures:** If the response is not received within the defined SLA, *Customer* may escalate the issue by contacting *Vendor's* support management team via the provided contact information. *Vendor* will prioritize escalated issues based on severity and impact on *Customer's* operations.
- **Support Levels:** The response time may vary based on the *Customer's* support level (Starter, Basic, Premium, or Essential) as outlined in Section 19 of this Agreement. *Customers* with Premium and Essential Support will receive expedited response times.

## 19. SUPPORT LEVELS

See licensing email for support level.

- Support Levels are Starter, Basic, Premium, and Essential. Starter Support includes email support. Basic Support includes phone and email support. Premium and Essential Support include phone, email, and expedited support response times.
- Premium and Essential Support have additional support fees on top of the "Starter or Basic Technical Support" services included with the normal product licensing.
- Extended Maintenance is designated for End-of-Life (EOL) software products. Support for EOL includes phone, email, and consultancy services, but no new versions of the EOL software product will be provided.
- Technical Support is defined as assisting customers with product bugs and technical issues, but not product consultancy. Technical support is available Monday through Friday between 6:30 AM and 4 PM PST by phone and email, excluding holidays. Response time is based on *Customer's* Support Level and in the order received.
- Consultancy Services are defined as services provided by *Vendor's* consultants to design, build, and implement business automation projects, assistance performing business automation tasks, and code review to troubleshoot new script problems.
- Training is defined as an overview of the interworking of a purchased product. It will review starting projects, logging, and licensing. It may cover a high-level overview of a project developed by *Vendor*.
- 24/7 Support is strictly for HelloID "Emergency" type technical issues (For example, Restore database backup, Reset admin password, Reset/change access policy, Restore/change primary authentication to HelloID portal, Resolve HelloID issues or create workarounds).

