

SPECIALIZED TERMS AND CONDITIONS
Software Maintenance Order Addendum

THE FOLLOWING TERMS AND CONDITIONS SHALL PREVAIL TO THE EXTENT THEY CONFLICT WITH THE APPLICABLE NG CTM-P-ST SERIES 001-412 TERMS AND CONDITIONS GOVERNING THE ORDER. FURTHERMORE, THIS ADDENDUM CONTAINS ADDITIONAL TERMS AND CONDITIONS UNIQUE TO THIS ADDENDUM. ALL NON-CONFLICTING TERMS AND CONDITIONS IN THE APPLICABLE NG CTM-P-ST SERIES 001-412 TERMS AND CONDITIONS GOVERNING THE ORDER SHALL REMAIN IN FULL FORCE UNLESS OTHERWISE INDICATED HEREIN.

CLAUSE TITLE AND NUMBER

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1. DEFINITION

"Licensed Software" means that computer software Products maintained under the terms of the Order and this Addendum.

2. APPLICABILITY TO SOFTWARE LICENSE ORDER

During the warranty period of any agreement between Seller and Buyer pertaining to the Licensed Software, all of the provisions of the Order shall be applicable without additional charge.

3. CONFIDENTIALITY OF SELLER'S INFORMATION (Applicable to Forms CTM-P-ST-005 through 007)

"Maintenance Proprietary Information" shall mean information which (i) is provided or otherwise made available by Seller to Buyer to support maintenance of the Licensed Software; and, (ii) is marked proprietary or bears a marking of like import. Buyer shall hold all Maintenance Proprietary Information in confidence and restrict disclosure thereof to only its employees, contract labor and agents who have a need to know so that Buyer may perform its obligations and exercise its rights under the Order and are under obligations to hold such information in confidence under terms and conditions at least as restrictive as the terms and conditions of the Order. Further, Buyer shall have the right to copy the Licensed Software for backup and archival purposes.

Buyer shall not be liable hereunder for use or disclosure of Maintenance Proprietary Information which occur after such Maintenance Proprietary Information:

1. is or becomes publicly known through no wrongful act of Buyer; or
2. is known to or in the possession of Buyer without restriction on disclosure or use through no wrongful act of Buyer, as evidenced by competent proof; or
3. is rightfully received by Buyer from a third party without restriction and without breach of the Order; or
4. is independently developed by Buyer without the use of or reference to the Proprietary Information.

In addition, Buyer shall not be liable hereunder for use or disclosure of Maintenance Proprietary Information if such Maintenance Proprietary Information is disclosed to satisfy a legal order by a court of competent jurisdiction or United States Government action; provided, however, that Buyer shall first advise Seller within sufficient time prior to the disclosure so that Seller has the opportunity to seek appropriate relief from the court or governmental order, and provided further that Buyer shall disclose only those portions of the Maintenance Proprietary Information legally required to be disclosed and request confidential treatment of the Maintenance Proprietary Information by the court or governmental entity.

4. DATA BREACH NOTIFICATION

Seller will promptly notify Buyer of any actual or potential exposure or misappropriation of Buyer data ("breach") that comes to Seller's attention arising out of maintenance of the Licensed Software. Seller will cooperate with Buyer in investigating any such breach, at Seller's expense. Seller will likewise cooperate with Buyer and, as applicable, with law enforcement agencies in any effort to notify injured or potentially injured parties, and such cooperation will be at Seller's expense, except to the extent that the breach was caused by Buyer. The remedies and obligations set forth in this subsection are in addition to any others Buyer may have, including, but not limited to, any requirements in the "Privacy, Confidentiality, and Security" provisions of terms and conditions governing the order.

5. DATA CONTROL

Seller will have policies and procedures in place to protect any data that Buyer provides to Seller, including destruction methods employed and how audit and system log information is protected. Buyer may, upon request, review Seller's applicable policies and procedures.

6. MERGERS AND ACQUISITIONS - IT PRODUCTS AND SERVICES

- A. If Buyer merges with or acquires entities that have maintenance services for the Licensed Software, the merged, or acquired entity's maintenance services will terminate upon completion of the acquisition or merger and the merger/acquired entity's maintenance services will be combined with Buyer's existing maintenance services of the same license type under the terms of this Addendum, provided that there are no outstanding receivables against either Buyer or the merged/acquired entity's account related to maintenance services. There shall be no transfer fee for combining the maintenance services. Maintenance services will continue for the combined number of licenses. Buyer may, at its option, permit an acquired entity to continue to use its maintenance services as a standalone operation, but subject to the terms of the Order at no additional cost.
- B. If Buyer merges with or acquires an entity or entities that have a need for Seller's products and services, Buyer and the acquired entity will be permitted to make purchases using the Order and utilize any of Buyer's pricing discounts in support of the acquired entity.
- C. In the event Buyer acquires a company that has a pre-existing contract with Seller at lower pricing than incorporated in the Order, the Parties shall amend the Order to incorporate the lower pricing.

7. NOTICE

Any notice or other communication hereunder required or that may be given pursuant to the Order shall be deemed received three (3) days after transmittal provided the correspondence is appropriately addressed as follows, using confirmed electronic mail, registered mail, return receipt requested, or any of the express mail services.

8. NO AUTOMATIC RENEWAL OF THE MAINTENANCE SERVICES

Notwithstanding any terms to the contrary, the maintenance services purchased under the Order shall not be extended beyond the purchased

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maintenance services term without express written consent of Buyer.

9. MAINTENANCE SERVICE RESPONSIBILITIES OF SELLER

- A. Maintenance Services. Seller shall maintain the Licensed Software so that it operates in conformity with all descriptions and specifications herein and in the Software License Order, including specifications for the performance of all improved or modified versions of the Licensed Software. As part of the maintenance services, Seller shall correct all errors discovered by Buyer or Seller.
- B. Support and Response Time. In the event that Buyer detects any error, defect or non-conformity in the Licensed Software, as part of the maintenance services, Seller shall furnish complete off-site telephone support, in the form of consultations, assistance and advice on the use and maintenance of the Licensed Software, within eight (8) hours of Buyer's request therefore. In the event that such problem in the Licensed Software is not corrected within twenty-four (24) hours of the initiation of such off-site telephone support, Buyer may submit to Seller a listing of output and all such other data conditions similar to those present when the error, defect or nonconformity was discovered. In the event that such problem is not corrected within five (5) working days after Seller receives from Buyer a listing of output and other data, Seller shall within the next twenty-four (24) hours provide on-site service. Seller shall implement temporary work around procedures and shall demonstrate to Buyer the good faith and diligent initiation and prosecution of corrective measures for all such problems involving the Licensed Software within seventy-two (72) hours of the commencement of such on-site services. In the event it is determined that the problem was due to Buyer error in the use of the Licensed Software, as opposed to an error, defect or nonconformity in the Licensed Software itself, Buyer shall pay Seller's standard commercial time and materials rates or such rate as may be established by Buyer and Seller for the reasonable value of the on-site service provided plus Seller's reasonable travel and per diem expenses if said costs and expenses are authorized in writing by Buyer.

10. SOFTWARE DEFAULT

Seller shall be deemed in default of the Agreement if the Licensed Software continues to exhibit defects causing serious disruption of use and/or repeated periods of downtime, notwithstanding Seller's remedial or maintenance efforts, over a continuous period of three months or more.

11. MAINTENANCE WARRANTIES

- A. Seller warrants that it will maintain the Licensed Software so that the Licensed Software will (i) be free from all programming errors and from defects in workmanship and materials, (ii) shall conform to the performance capabilities, specifications, functions and other descriptions and standards applicable thereto as set forth in the Software License or Order applicable to the Software, and (iii) the Licensed Software will operate in conformity with all improvements, additions, or modifications of the Licensed Software installed at Buyer's site or sites. The maintenance services will be performed in a timely and professional manner by qualified maintenance technicians familiar with the Licensed Software and its operation, and the maintenance services shall conform to the standards generally observed in the industry for similar services.
- B. These maintenance services warranties shall not be affected by Buyer's modification of the Licensed Software (including source code) so long as Seller can discharge its warranty obligations notwithstanding such modifications or following their removal by Buyer.
- C. The foregoing warranties shall survive inspection and acceptance of, and payment for, the Licensed Software and shall remain in effect for the term of the Software License as to each Licensed Software furnished and shall run to Buyer, its successors, assigns, and customers under a prime contract. These warranties shall not be deemed to limit any warranties of additional scope given to Buyer by Seller, nor limit Buyer's rights or Seller's obligations under any other provision of the Order, at law or in equity. No warranties are waived by Buyer supplying, reviewing, commenting upon, or approving plans, specifications, or data, issuing changes to the Order, or inspecting or accepting the Licensed Software.