

SDL

PREMIUM SOFTWARE MAINTENANCE AGREEMENT

This Premium Software Maintenance Agreement (the "**Agreement**") is made by and between SDL Global Solutions (Ireland) Limited, a company under the laws of Ireland, with offices at La Vallee House, Upper Dargle Road, Bray, County Wicklow, Ireland ("we", "us", "our"), and the company or other organisation or individual identified on the Quotation ("you", "your"). By purchasing these services or by accessing the services described in this Agreement you agree to be bound by this Agreement.

1. Definitions

- 1.1. "**Documentation**" means any end-user documentation, online help, specifications, notes and technical documents that we provide with the Software.
- 1.2. "**Maintenance**" means:
 - a) our provision of Upgrades and any Documentation updates; and
 - b) technical assistance by us (called "**Support**") to help you to implement and use the Software in line with its Documentation, including trouble-shooting and similar problem resolution but excluding implementation. (We would charge professional services fees for such installation services).
- 1.3. "**Maintenance Fees**" means fees payable by you to us in return for Maintenance.
- 1.4. "**Quotation**" means the price quotation we make to you (in the form of an email, through the quotation module on our website, an invoice or otherwise) under which you purchase Maintenance.
- 1.5. "**Software**" means those software products of ours identified in the Quotation under which you purchase Maintenance, and any Upgrades of these that we provide to you under this Agreement.
- 1.6. "**Support Level**" means level of service identified in the Quotation.
- 1.7. "**Term**" means the time during which this Agreement applies. It is explained in Section 7.1.
- 1.8. "**Upgrade**" means any release of the Software that we make generally available to users during the Term including modifications, error corrections, updates and enhancements as well as new releases of the Software. Upgrades also include software products that we make generally available as successor products to the Software, to the extent that these incorporate the functionality of the Software, even if they have a new name.

2. Scope of Maintenance

- 2.1. During the Term, if we receive your Maintenance Fees we shall provide Maintenance for the Software for your own benefit only.
- 2.2. We shall only provide Maintenance for Software which is: (i) the version that we currently make generally available to users; (ii) the last version of the previous major release; and (iii) all the versions in between. Where we change to a new major release we will increase the number to the left of all decimal places (for example from 7.n.n to 8.n.n), or increase the year designator (for example SDL XXX 2009 to SDL XXX 2010) in its published name, or give it a new product name. Unless explicitly agreed between us we shall not provide Maintenance for Software which is designated "demonstration", "trial" or "test", or otherwise indicated to be for non-production use, even if we provide it with other Software.
- 2.3. You are responsible for making sure that your hardware, operating systems, back-end databases, virus protection, database and backup software and procedures, data recovery programs, and the like are always adequate for the Software. We are not required to provide any services concerning third-party equipment or software or your data.

- 2.4. We are not required to resolve or to attempt to resolve any defects in the Software : (i) unless the component of the Software has been installed by us or has otherwise been properly installed and has been used at all times in accordance with the Documentation; (ii) if the Software has been modified, altered or added to, (other than by us or upon our explicit instruction); or (iii) if the Software has been subject to misuse, neglect or unusual physical, electrical or electromagnetic stress, or some other type of accident, other than where this was our fault.
- 2.5. UNLESS AGREED IN ADVANCE IN WRITING BY US, WE ARE NOT REQUIRED TO PROVIDE SUPPORT FOR ANY SOFTWARE THAT WE DESIGNATE "SERVER", IN THE PRODUCT NAME, A QUOTATION OR ELSEWHERE, UNLESS THAT SOFTWARE HAS BEEN INSTALLED BY US. (We would charge professional services fees for such installation services.)
- 2.6. You agree not to use Maintenance in an abusive or unreasonable manner including, as examples only, recurrent questions to which answers appear in Documentation supplied with the Software or make repeated requests concerning previously resolved issues.

3. Support Centre and Administration

- 3.1. In this section we talk about your designated representative(s). If you are an individual, then you are the designated representative. If you are an organisation you may designate representatives to us at any time through the on-line customer support centre. Unless otherwise agreed in writing between you and us, your Support Level indicates your maximum number of designated representatives at any time:

Support Level 1	Support Level 2
One (1) representative	Four (4) representatives

- 3.2. Only your designated representative(s) shall request Support. They shall do so via the on-line customer support centre, accessed by clicking the My Account link on www.sdl.com or as indicated to you on that website or by another means that we may reasonably specify.
- 3.3. We will log all Support requests made by you, and shall associate with these information collected from you, for instance:
 - a) the date and time of the request;
 - b) the name of your designated representative;
 - c) a short description of the request;
 - d) the date and time that we start handling the request;
 - e) the date and time that the request is resolved; and
 - f) the name(s) of our employee(s) receiving and handling the requests.

We will make this information available to your designated representative(s) through the on-line customer support centre.

- 3.4. If you are a company or an organisation you shall provide first-line assistance to users of the Software. This shall include handling the first intake of all questions/remarks regarding the Software, making reasonable endeavours to solve any problems, and notifying unresolved problems to us.
- 3.5. You shall give reasonable assistance to us in solving any problem including, for instance, by providing a listing of output and any other data that we may reasonably request to reproduce and/or resolve the problem, and allowing us reasonable access to the Software.

4. Support Categories and Response Times

- 4.1. Our working days and working hours for Support shall be from Monday to Friday:
 - APAC: 09.00am – 17.00pm (Japan Standard Time – Asia and Australasia),
 - EMEA: 08.00am – 17.00pm (GMT +00:00 – Europe and Rest of World), or
 - AMERICAS: 09.00am – 20.00pm (Eastern Standard Time – Americas),

depending on the location of designated representative(s) as advised to us through the on-line customer support centre or elsewhere. We will make reasonable endeavours to progress requests on public holidays in the time zone you have chosen but which are not public holidays in other places from which Support personnel with suitable knowledge can be made available.

4.2. We provide Support according to the following categories. We may change the categories or change the status of a request to an enhancement request so long as it is reasonable to do so.

- a) A "Critical Priority Error" means a problem which simultaneously affects all or more than one of your users and for which no practicable workaround is available and that prevents or materially impairs the performance of substantially all major functions of the Software as described in the Documentation so that: (i) the Software is unavailable to the you or at material risk of becoming unavailable; or (ii) you are unable to use the Software due to continual failures or data corruption. Once a Critical Priority Error is resolved (whether by procedural workaround, system restart, hot-fix, or otherwise) it shall be reclassified a Medium Priority Error.
- b) A "High Priority Error" means a problem for which no practicable workaround is available that prevents or materially impairs the performance of a major function of the Software as described in the Documentation so that: (i) a major function of the Software is unavailable to you or its availability has been materially interrupted and substantial risk of recurrence exists; or (ii) you are unable to use the Software due to intermittent failures or data corruption. Once a High Priority Error is resolved (whether by procedural workaround, system restart, hot-fix, or otherwise) it shall be reclassified a Medium Priority Error.
- c) A "Medium Priority Error" means a problem, whether or not a practicable workaround is available, that prevents or materially impairs the performance of a minor function in the Software as described in the Documentation, but that does not make the Software wholly unavailable to you or materially inhibit your use of the Software.
- d) A "Low Priority Error" means a problem that does not prevent or materially impair the performance of any function in the Software as described in the Documentation, and does not materially inhibit your use of the Software. Such a problem may be cosmetic in nature.

4.3. Initial response times, from the time that you make a request through the on-line customer support centre, are decided by your Support Level and by the category of the request. We shall try to meet these times, but make no guarantee of this, or of immediately resolving your request.

Category	Support Level 1	Support Level 2
Critical	1 working day	3 working hours
High	2 working days	5 working hours
Medium	3 working days	1 working day
Low	5 working days	5 working days

5. Fees

5.1. You will pay us in the currency shown in the Quotation. The initial Maintenance Fee is payable at the start date of this Agreement. However, if we have agreed in writing that you shall pay following our invoice you will pay the amount of any valid invoice in full within 30 days unless a different period is given on that invoice. If you do not pay on time we have the right to charge interest at the rate of 4% per annum above Barclays Bank base rate from time to time (or the amount allowed by law if this is less), and we may suspend Maintenance for the relevant Software until you pay the Maintenance Fee and any interest charge. We shall not do either of these things if you are in good faith challenging our invoice and trying to resolve this with us in as short a time as can be reasonably achieved.

- 5.2. If you license additional Software then for each licence you must pay the additional Maintenance Fees according to the then current price.
 - 5.3. If any Maintenance Fee is to be applied to a different period from the one for which it is defined we will calculate the amount due *pro-rata*. If, for example, the period lasts 365 days and you license additional Software 65 days into the period, we shall calculate the amount *pro-rata* for the remaining 300 days, and charge you that for Maintenance for the remainder of the period.
 - 5.4. We may increase Maintenance Fees but only if we have given you at least three months notice and we may do this by email or through our website, for instance. For Maintenance of the same Software we cannot increase Maintenance Fees by more than 5% in any year.
6. Confidentiality
- 6.1. You and we may, because of our relationship under this Agreement, have access to information and materials which the other treats as confidential (such as business plans, financial information, designs, marketing, finances, customers and so on, or other business information or trade secrets), and you and we each agree to keep this information of the other confidential, and to use it only as we need to in order to carry out our tasks under this Agreement.
 - 6.2. If we call whichever of us receives the other's confidential information the "receiving party" and the other the "disclosing party", then:
 - a) the receiving party does not have to keep confidential any information of the disclosing party which: (i) becomes generally available to the public through no fault of the receiving party; (ii) was independently developed by the receiving party; or (iii) becomes available to the receiving party on a non-confidential basis from someone other than the disclosing party, so long as that someone is not prohibited for any reason from revealing it to the receiving party; and
 - b) the receiving party may disclose information of the disclosing party to the extent that this is required by law or by order of a court or governmental agency provided, however, that the receiving party must give the disclosing party prompt notice of such disclosure.
 - 6.3. You and we agree that all confidentiality obligations concerning the Software or Documentation or any information which is a trade secret shall survive in perpetuity, and obligations concerning any other confidential information shall end five (5) years from the date of its disclosure.
7. Term and Termination
- 7.1. The Term of this Agreement shall start on the date that we make the Software available to you. Unless it is terminated as given in this Section 7 it shall last until the date given for its expiration in the Quotation and shall then automatically renew for periods of one year or any different period specified in that Quotation.
 - 7.2. This Agreement may be terminated:
 - a) by either you or us with immediate effect if the other fails to perform any of its material obligations under this Agreement, and continues to fail for thirty (30) days after receipt of written notice of this by the other;
 - b) by either you or us with immediate effect if the other: (i) becomes insolvent; (ii) makes an assignment for the benefit of creditors; (iii) files a voluntary bankruptcy petition; (iv) acquiesces to any involuntary bankruptcy petition; (v) is adjudicated bankrupt; or (vi) ceases to do business;
 - c) by either you or us at the end of the period given in the Quotation or the end of any renewal period, by means of written notice to the other delivered not less than sixty (60) days in advance.

- 7.3. If you terminate this Agreement under Section 7.2(a), above, you shall be entitled to a *pro rata* refund of any Maintenance Fee for which you have prepaid up to the date of your delivered notice. You shall not be entitled to a refund in any other circumstances.
- 7.4. We may shorten any renewal period by giving you notice not less than 65 days before the start of such a renewal period, and will reduce the amount of any Maintenance Fee *pro rata*. We may do this to align dates for payment of Maintenance with dates for payment of other services that we provide to you, for instance.
- 7.5. Any provisions of this Agreement which, by their nature, extend beyond the Term will survive and remain in effect until all their obligations are satisfied.
8. Limitations on Liability
- 8.1. IN NO EVENT SHALL EITHER YOU OR WE BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY NATURE INCLUDING, FOR INSTANCE, ANY LOST REVENUES OR PROFITS OR COSTS ARISING FROM UNFITNESS FOR PURPOSE. Nothing elsewhere in this Agreement shall overrule this.
- 8.2. OTHER THAN FOR PHYSICAL INJURY OR DEATH CAUSED BY THE NEGLIGENT ACT OR OMISSION OR WILFUL MISCONDUCT OF YOU OR US, OR AS CONCERNS ANY CLAIMS ARISING UNDER SECTION 6 (CONFIDENTIAL INFORMATION), YOUR TOTAL LIABILITY TO US AND OUR TOTAL LIABILITY TO YOU UNDER THIS AGREEMENT SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES, THE AMOUNT OF MAINTENANCE FEES PAID OR PAYABLE TO US UNDER THIS AGREEMENT DURING THE PRECEDING TWELVE (12) MONTHS. Nothing elsewhere in this Agreement shall overrule this.
9. Publicity.
- 9.1. We may use your graphical logo and company name on our website and in marketing materials to represent that you are a client, and shall respect any procedures and/or guidelines provided by you for the use of your logo.
- 9.2. Either you or we may make announcements regarding this Agreement or its contents with the prior consent in writing of the other, and this consent will not be unreasonably withheld or delayed or have unreasonable conditions attached to it. It cannot be withheld where the announcement is to meet the requirements of any applicable regulatory body.
10. General Contract Provisions
- 10.1. Entire Agreement. This Agreement comprises the entire agreement and understanding relating to its subject matter. It supersedes all other prior agreements and understandings, written or oral.
- 10.2. Severability. If any provision of this Agreement is declared invalid or illegal then the remaining provisions of this Agreement shall be unaffected, unless the fundamental reason for the Agreement existing is cancelled by this. Headings are used in this Agreement for convenience only, and do not affect its meaning.
- 10.3. No Waiver of Rights. If you or we don't exercise one of our rights under this Agreement or do not do so quickly this does not mean that either you or we are prevented from exercising any of our rights.
- 10.4. No Variation; Notices. No change in the provisions of this Agreement will be valid unless confirmed in writing by both you and us on or after the start of the Term. Any notice given under this Agreement must be in writing and may be delivered personally or by recorded delivery post and in the case of post will be deemed to have been given two (2) working days after the date of posting. Notices shall be delivered or sent to us at: Globe House, Clivemont Road, Maidenhead, Berkshire SL6 7DY England or to you at the address given in the Quotation or to any other address notified in writing by you or us for the purpose of receiving notices. Facsimile exchange of signatures, including the emailing of a scanned signature, shall be binding.
- 10.5. Remedies. You and we acknowledge that breach of the confidentiality obligations would cause irreparable harm for which monetary damages would be insufficient remedy.

Therefore, you and we each agree that if this happens, in addition to any other remedies, whichever of us is harmed is entitled to seek injunctive or other equitable relief against the other.

- 10.6. Independent Contractors. The relationship between you and us is that of independent contractors. Nothing in this Agreement creates or implies a partnership, joint venture, agency relationship or contract of employment.
- 10.7. Non-solicitation. Neither you nor we shall, without the prior written consent of the other, at any time solicit, or seek to solicit, the services of any employee or contractor of the other during the Term or for six months after it ends. This will not stop either you or us from hiring anyone who, without solicitation, responds to any advertisement for employment in a public medium.
- 10.8. Force Majeure. Other than as concerns your obligation to pay, neither you nor we shall be liable for any breach of obligations resulting from an event beyond your reasonable control or ours, respectively. When either you or we become aware of such an event the other must be notified, with details of the circumstances causing the event. If a default due to such an event continues for more than six weeks then whichever of you or we is not in default shall be entitled to terminate this Agreement.
- 10.9. Assignment. Either you or we may assign all rights and obligations under this Agreement to its owner or its successor in business by giving notice in writing to the other. In no other way may this Agreement nor any rights under it be assigned or otherwise transferred without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed and shall not have unreasonable conditions attached.
- 10.10. Prevalence of English Language: This Agreement is drawn up in the English language. If this Agreement is translated into any language other than English, the English language version shall control.
- 10.11. Governing Law; Jurisdiction. This Agreement shall be governed by and shall be interpreted in accordance with the laws of Ireland and you and we submit to the exclusive jurisdiction of the Irish Courts in relation to all matters arising out of or in connection with this Agreement. You and we agree in the first instance to attempt to settle any dispute arising out of this Agreement by negotiation.