Software Support & Maintenance Contract

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Software Support & Maintenance Contract

entered into between

Namirial GmbH - (hereinafter referred to as Namirial)
REDACTED

and

Preamble

DWP is using software from Namirial. As an addition to this agreed usage, the parties now enter into a Software Support & Maintenance Contract. Attention is drawn to the fact that maintenance services relate to software only and do not cover hardware, and that services are provided for Namirial products only; maintenance services for stand-alone third-party products are beyond the scope of this contract (third-party software being a part of the Namirial software product also falls under Namirial's support responsibility).

1) Services

Namirial will provide the following services to DWP. Other services (e.g. customization of the software, installation support, training, consultancy services, ...) are beyond the scope of this contract.

1.1) Updates and Upgrades

Within the framework of this maintenance contract, all updates and upgrades are provided free of charge inasmuch as and as long as they are available for the hardware and operating system version in question. The current versions of the program can be downloaded free of charge. Security updates must be installed, pursuant to Item 1.3.4.

Upgrades include new versions of the purchased software. Additional modules can be purchased separately.

1.2) Support-Services and Error Report

Namirial warrants support-services on workdays, Monday through Thursday, between 8.00 am and 5.00 pm and Fridays between 8.00 am and 3.00 pm.

DWP is obligated to communicate errors prequalified by him, including documentation, immediately and in writing to Namirial via *REDACTED* stating the possible cause, and to give Namirial the opportunity to resolve the error in question. The error must be reproducible.

Should it prove impossible to resolve an error directly within support-services, error resolution will be performed pursuant to Item 1.3.

1.3) Troubleshooting

1.3.1) Software error categories and reaction times

• Critical errors

A critical error exists if, because of the error,
- business operations are seriously impaired;
- a danger of damage events exists;
- practical use (economically meaningful use) is impossible;
- there are serious impairments to supplies to systems attached via interfaces;
- compliance with legal requirements (under EU law) is impaired to an extent that a regulatory authority could impose penalties.

If a critical error exists, and if an economically viable workaround does not exist, work on resolving the error must begin the next day, in case of error report by 12.00 h, otherwise on the day after next in case of later error report, and the error must be removed by means of a hotfix as soon as possible.

• Non-critical errors

A non-critical error exists if, because of the error,
- use of the application is impaired, however, results are not invalidated;
- critical errors have been mitigated by a workaround allowing for final resolution in the form of an intermediate release.

In case of non-critical errors, resolution of errors will commence within a reasonable period after receipt of error report and said non-critical errors will be resolved as quickly as possible within the scope of an intermediate release.

Trivial errors

A trivial error exists if, because of the error,
- functions cannot be performed correctly in borderline situations;
- the documentation or parts thereof do not comply with agreed standards;
- the design of functions does not comply with agreements in part and these errors constitute a minor impairment of operations (the use of the software).

Trivial errors will be resolved in the course of planned release distributions.

1.3.2) Error removal hours are as follows – unless a contrary agreement exists – workdays, Mondays to Thursdays from 8.00 am to 5.00 pm and Fridays from 8.00 am to 2.00 pm. Saturdays, December 24 and 31, and Good Friday are not workdays.

1.3.3) Error resolution relates only to software versions supplied to the market up to two years prior to receipt of error report. Older versions will not be maintained unless otherwise agreed in writing.

1.3.4) In updates categorized by Namirial as security updates DWP has an obligation to update/upgrade; failure to comply may lead to blocking of its access to the Trust Center, and ensuing inability to perform some functionalities.

1.3.5) Namirial will provide these updates/upgrades as downloads, or in another suitable format. DWP is responsible for installation.

1.4) Errors within Responsibility of DWP

1.4.1) Should it prove impossible, within a specific time, or generally, to resolve an error reported by DWP for reasons attributable to DWP or any third party (for whom DWP is responsible), Namirial shall not be held liable for consequential damage: in this case DWP shall remunerate Namirial for actual costs incurred.

1.4.2) Errors are specifically attributable to DWP in cases in which the error is caused by program modification, extension or any other intervention by DWP or third parties (for whom DWP is responsible), and in case of impairment by computer viruses at DWP's premises, and if DWP or third parties (for whom DWP is responsible) have failed to observe reasonable instructions and/or security rules specified by Namirial. The burden of proof lies with DWP.

1.4.3) Namirial will inform DWP without undue delay, and in a suitable manner, of any interruptions or major restrictions to systems operated by DWP inasmuch as they are necessary for purposes of maintenance, the undertaking of work required for operations, improvements of goods or services provided, or for the avoidance of errors. Advertised interruptions in the sense of this item, and interruptions arising from technical or other problems beyond the control of Namirial, do not constitute an interruption of services. Namirial shall not be liable for these interruptions.

1.4.4) The burden of proof for the existence of errors lies with DWP. DWP must reasonably demonstrate within the scope of its error report how the error is reproducible. In case of unjustified error report, Namirial reserves the right to bill DWP for expenses incurred as stated in the price list valid at that time provided both parties agree to such billing prior to Namirial undertaking the work.

1.5) Special Cases not Covered by Maintenance Contract

The following special cases are not covered by this Maintenance Contract:

- Damage caused by intervention of third parties (for whom DWP is responsible).
- Damage caused by accident, force majeure or improper transport.
- Fitting of hardware or use of add-on hardware which has not expressly been approved by Namirial.
- The installation of non-authorized plug-ins and add-ons, and of third-party software not approved by Namirial in writing shall invalidate DWP's entitlement to maintenance without DWP being entitled to repayment of fees.

2) Contribution of DWP

2.1) DWP agrees to provide or cause to be provided on DWP's premises all reasonable assistance for the performance of services by Namirial.

2.2) Should services be provided on DWP's premises, DWP shall provide free of charge such workplaces and infrastructure in sufficient quantity and quality as necessary for the performance of said services. DWP is not permitted to issue instructions – no matter to what they relate – to Namirial staff and shall discuss matters relating to the performance of said services with named Namirial contacts only.

2.3) Where agreed DWP shall place a qualified and Namirial-trained member of staff at disposal of Namirial, and grant Namirial immediate access to facilities as required. Should it be deemed necessary to temporarily remove equipment for the purpose of error resolution, DWP shall do so at own cost, and neither delay nor impair the performance of work to be performed. Modification of Namirial devices, equipment and the like by DWP are subject to express written permission by Namirial and may be performed only within the scope of legal and technical constraints. Costs of all works related to said modifications shall be borne by DWP.

2.4) On agreed dates and at own cost, DWP shall place at Namirial's disposal all information, data, documentation and if necessary third parties (e.g. system integrator) required by Namirial for the performance of work and in the form required by Namirial and shall aid Namirial upon reasonable request in troubleshooting and resolution of errors, the coordination of processing orders and of services.

2.5) DWP shall store data and information given to or received from Namirial on own premises in a manner that allows reconstruction at any time for maintenance purposes.

2.6) DWP shall expressly commit itself to maintain a complete system backup to an extent reasonably agreed with Namirial, and without such agreement a system backup that reflects the current state of art.

2.7) Should DWP fail to comply with its obligation to reasonably cooperate at agreed dates, or to agreed extent and of agreed quality, services performed by Namirial shall be deemed as in accordance with this Contract despite possible constraints. DWP shall reimburse Namirial for additional effort involved and/or additional costs incurred at Namirial's current rates.

2.8) DWP shall name up to two contacts authorized to receive services and report errors; said contacts must participate in administrator training by Namirial. Error resolution and support assume the qualification of errors as attributable to Namirial by DWP's contact person to the best of its knowledge, the functionality of a remote data transfer device to Namirial's specification and the reproducibility of errors.

3) Consideration

Prices for maintenance services are stated in the current price list which constitutes an integral part of this Maintenance Contract.

4) Term and Cancellation

The term of the support & maintenance services shall be from the date June 1, 2020 for a full year. The term of the support & maintenance services shall be extended in mutual agreement by the parties, which will not unreasonably be withheld, by one year, unless Namirial or DWP cancels the support & maintenance services in writing upon ninety (90) days prior written notice.

The validity of this Support & Maintenance Contract is subject to the existence of a valid software license.

5) Miscellaneous

The provisions of the software license apply analogously to this Support & Maintenance Contract.

6) Changes or Addenda relating to DWP

Definition of Severity Levels of Program Errors & Service Deadlines

Three severity levels of Program Errors are defined below and shall determine three different levels of maintenance service to be provided by Namirial under this Agreement. The classification of the level of severity will be done by CUSTOMER based on the documented circumstances of the error reported. An error must be reproducible.

If third party software, which has not been agreed by Namirial in writing, is running on computers together with the Licensed Software, Namirial is entitled to request the deactivation of this third party software and to prove the error without the third party software.

- **Level 1 – Blocking**: Is a Program Error of any nature which causes a block in the usability of a substantial feature of the Licensed Software according to the specifications of the functions.
- **Level 2 – Severe**: Is a Program Error of any nature which causes a malfunction in any part of the Licensed Software but does not prevent its use.
- **Level 3 – Minor**: Is a Program Error of any nature in the software or documentation which does not prevent the use of any part of the Licensed Software.

Service Deadlines

The following table sets forth service deadlines within which Namirial will use its best efforts to provide the maintenance service, according to the severity level of the Program Error reported within the error removal hours defined below:

Severity Level of Program Error	MAINTENANCE SERVICE DEADLINES (counting from time of receipt of error report)		
	Feedback	Delivery of functional workaround/patch	Delivery of definitive Correction
Level 1 - Blocking	2 hours	8 hours	24 hours
Level 2 - Severe	8 hours	24 hours	40 hours
Level 3 - Minor	12 hours	4 calendar days	Next Version

The terms "hours" and "minutes" refer to solar hours and minutes and the deadlines run from the time of receipt by Namirial of DWP's error report.

Error removal hours are workdays; Mondays to Thursdays from 8.00 am to 6.00 pm and Fridays from 8.00 am to 3.00 pm. Saturdays, December 24 and 31, and Good Friday are not workdays.

Ansfelden, _____

REDACTED
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_____
Namirial GmbH

REDACTED

DWP