

General Terms and Conditions for the Maintenance of Software
of CENIT AG Systemhaus
- as of February 2008 –

1. Object and Scope of Maintenance

- 1.1 The object of the maintenance services is the software supplied to the customer on the basis of the *General Terms and Conditions for Deliveries and Services* of CENIT AG Systemhaus (CENIT), which software has been developed and produced by CENIT itself (CENIT Software) or by other manufacturers (Third-party Software). The exact designation of the supplied software in respect of which maintenance services according to these *General Terms and Conditions for the Maintenance of Software* are provided is stated in the confirmation of the order by CENIT and/or the program certificate attached to such confirmation.
- 1.2 Maintenance of the software by CENIT may include the following services as specified in the confirmation of the order by CENIT:
- Hotline service (no. 2);
 - Support service (no. 3);
 - Update service (no. 4).
- 1.3 As regards Third-party Software, CENIT shall not be obligated to provide maintenance services or other services that are covered by maintenance or support agreements existing between the customer and the manufacturer of the Third-party Software.
- 1.4 These *General Terms and Conditions for the Maintenance of Software* shall also apply to future versions of the software supplied to the customer by CENIT in the context of the update services according to no. 4.1 below, unless otherwise agreed on the occasion of the supply of the respective later version. After a new version has been released, the maintenance services for the respective previous version will be continued for a period of six months.

2. Hotline Service

- 2.1. In the context of the hotline service, trained staff members of CENIT will be at the disposal of the customer in order to answer questions arising in connection with the normal use of the program , especially questions concerning the operation and possible applications of the software (Helpdesk).
- 2.2. Furthermore, the hotline service will be available to the customer for purposes of accepting notifications of failures. To the extent possible, the hotline service will remedy such failures and/or defects of the program by indicating a simple bypass solution to be carried out by the customer (First Level Support). Otherwise, the problem will be promptly communicated to the support service of CENIT (see no. 3 below) or the support infrastructure of the respective third-party manufacturer.
- 2.3. The hotline service of CENIT is at the customer's disposal on working days (Monday through Friday, not including statutory holidays at the seat of CENIT) from 8:00 a.m. through 7:00 p.m. and can be reached as follows:
 - by telephone at +49 711 7825-3222
 - by fax at +49 711 7825-4222
 - by e-mail at support@cenit.de
 - online at www.cenit.de/...

3. Support Service

- 3.1 After notification by the hotline service, failures occurring during the normal use of the software by the customer will be handled by CENIT's support service (Second Level Support). A failure is deemed to exist if the software does not fulfill the functions indicated in the program documentation, if it furnishes incorrect results, interrupts its run in an uncontrolled manner, or otherwise fails to work according to its agreed functions so that the normal use of the software is significantly impaired.
- 3.2 CENIT shall be obligated in the context of the support service to narrow down the cause of the failure, analyze the failure, and remove it or, to the extent that a removal is not possible with a reasonable expenditure of money and/or time, to maintain the operation of the software by pointing out a bypass solution. In the case of Third-party Software, CENIT may involve the support infrastructure of the respective manufacturer for purposes of rendering these services.
- 3.3 Measures of the support service will be carried out during the hours stated under no. 2.3 above. Measures outside these hours will only be taken on the basis of a separate agreement in the individual case, subject to payment of separate remuneration.

3.4 The staff members of the support service of CENIT will classify the failures reported by the hotline service for purposes of their handling according to the following priority levels:

• **Priority P1: Prevention of Operations**

A prevention of operations is deemed to exist if, due to malfunctions, incorrect work results, or response times being exceeded, the use of the software is impossible not only temporarily, or is restricted to such a degree that central business processes can no longer be executed.

• **Priority Normal P2: Disturbance of Operations**

A disturbance of operations is deemed to exist if, due to malfunctions, incorrect work results, or response times being exceeded, there is a disturbance in the functions of the working place and such disturbance has a considerable adverse effect on business processes, even though the use of the software is not impossible or seriously limited.

• **Priority P3: Other Disturbances**

Other disturbances are deemed to exist if the use of the software is not materially affected, especially if there is no adverse effect on the functions of the working place.

3.5 In the context of its support service, CENIT offers the following response times during the hours according to no. 2.3 above; these response times are counted from the point in time of the receipt of the detailed notification of the failure according to no. 6.1 below by the hotline service (Call Receipt):

• **Priority P1:**

Response time 2 hours (in the event of a Call Receipt by 4:00 p.m., the call will be passed on to and initially handled by the support service on the same day)

• **Priority P2:**

Response time 4 hours

• **Priority P3:**

Response time 8 hours

Response time shall mean the time it takes for a qualified staff member of CENIT's Support Service Center to actively attend to the reported failure and initiate the handling of the failure either by telephone, email, or remote access or, if necessary in the context of reported failures of the priority level P 1, by carrying out support services on the customer's premises.

- 3.6. If a reported failure of the priority level P 1 cannot be removed within 8 hours (during the hotline hours according to no. 2.3 above) as from the Call Receipt, an escalation process will automatically be initiated within CENIT. CENIT will give the customer the name of a responsible staff member who will control the handling of the failure and coordinate all measures that are necessary both internally and externally. These measures will, for example, include:
- Preparing an action scheme jointly with the customer;
 - Informing CENIT's management;
 - Making inquiries with the development department of CENIT or the manufacturer of Third-party Software.

The indicated staff member will be the personal contact person of the customer and will keep the customer informed of all activities. After the removal of the failure, the entire system will continue to be observed for a certain period of time. During this phase, the indicated staff member will continue to be at the disposal of the customer and assist the customer with advice.

- 3.7 In all cases other than those described under no. 3.6 above, the member of the CENIT hotline service taking delivery of the notification of the failure shall remain the customer's principal contact person as regards the handling of the failure. The member of the hotline service will coordinate all necessary steps and will inform the contact person with the customer at regular intervals of the progress made with the removal of the failure.

4. Update Service

- 4.1 In the context of the update service, CENIT will supply the customer with new program releases of the software as well as the pertinent program documentation on machine-readable data storage media in object code format for installation by the customer.

- 4.2 The update service does not include extensions of the software with improved functions separately offered by CENIT as new standard programs or standard modules (Upgrades). Licenses for the use of such Upgrades can additionally be acquired by the customer at the list prices of CENIT applicable from time to time.
- 4.3 With regard to the right to use the new program versions supplied to the customer in the context of the update service, the *General Terms and Conditions for Software Licenses* of CENIT shall apply in the case of CENIT Software, whereas in the case of Third-party Software, the license conditions of the respective manufacturer shall apply. CENIT's warranty and liability obligations in respect of the new program versions shall be governed by the *General Terms and Conditions for Deliveries and Services* of CENIT.

5. Delimitation: Services not Included

- 5.1 An obligation on the part of CENIT to provide maintenance services according to these *General Terms and Conditions for the Maintenance of Software* does not exist:
- outside the hours for hotline and support services stated under no. 2.3 above;
 - if the software is used contrary to the provisions of the applicable license conditions, in the case of CENIT Software, contrary to the provisions of the *General Terms and Conditions for Software Licenses* of CENIT;
 - if the software is modified by the customer or a third party;
 - with regard to failures of the software that have been caused by faulty application on the part of the customer and that could have been prevented in the event of careful consultation of the program documentation;
 - for failures of the software due to virus infestation or other external influences for which CENIT is not responsible;
 - for failures of the software that are due to defects of the hardware, the operating system, or other computer programs;
 - for the reconstruction of sets of data that the customer has not sufficiently secured against loss, contrary to the provisions of no. 6.4 below.

- 5.2 Furthermore, the scope of maintenance does not include the installation of the software and of new program versions supplied in the context of the update service according to no. 4.1 above on the customer's system, the performance of release changes, the programming of required adjustments, if any, as well as the training of staff members of the customer. Such services will be rendered by CENIT upon request by the customer subject to separate remuneration on the basis of the *General Terms and Conditions for Deliveries and Services* of CENIT.
- 5.3 The customer shall inform CENIT of its own accord of changes in the place of installation of the software, if any. Additional expenses incurred by CENIT within the framework of the provision of the maintenance services as a consequence of a change in the place of installation shall be borne by the customer.

6. Cooperation Duties of the Customer

- 6.1 In the context of the notification of the hotline service of failures, the customer shall furnish CENIT with all available failure reports, system logs, log files, interim and test results, as well as any other documentation and information necessary for analyzing and handling the failure. The failure must be described such that it can be reproduced. If CENIT carries out an analysis of a failure at the customer's request and the analysis shows that there is no failure that CENIT is obligated to remove, CENIT may invoice the customer for the corresponding expenditure on the basis of the hourly rates of CENIT as applicable from time to time.
- 6.2 For the provision of the maintenance services, especially in the context of the support service, the customer shall grant CENIT and its staff members free access to the software as well as to the hardware and operating system of the customer. Furthermore, the customer shall be obligated to provide CENIT with a suitable infrastructure for remote access to the software in the event of a failure.
- 6.3 The customer shall name up to three authorized and qualified contact persons who may directly call the CENIT hotline. Additionally, the customer shall name one staff member working at the place of installation of the software as the principal contact person who will make all decisions in connection with the performance of the maintenance services or will ensure that such decisions are made without undue delay.
- 6.4 The customer shall be obligated to carry out data backups at regular intervals in accordance with the requirements stipulated by CENIT or the respective manufacturer of Third-party Software. In the absence of such requirements, data backups must be made according to the generally acknowledged principles of secure data processing.

7. Remuneration

- 7.1 In the absence of a separate arrangement in the confirmation of the order by CENIT, the remuneration for the maintenance services to be rendered according to these *General Terms and Conditions for the Maintenance of Software* shall be as stated in CENIT's price list as amended from time to time . Unless otherwise agreed, the maintenance fees will be charged as from the delivery date or, if installation by CENIT has been agreed upon, as from the day of the installation of the software.
- 7.2 The maintenance fees must be paid annually in advance and will be billed at the beginning of each calendar year. Timely payment of the maintenance fees is a prerequisite for the provision of the maintenance services in the respective calendar year.
- 7.3 To the extent that the maintenance services are performed in connection with a license for CENIT Software that has been granted for a definite or an indefinite period of time (according to nos. 3.3 and 3.4 of the *General Terms and Conditions for Software Licenses* of CENIT), the maintenance fees are included in the running license fees so that no separate invoice for the maintenance fees will be issued.
- 7.4 In the event of extensions of use through the acquisition of further licenses during the term of the Maintenance Agreement, the maintenance fees will increase proportionately. In the absence of separate agreements, the prices stated in the price list of CENIT, as amended from time to time , shall apply. The increased maintenance fees shall be payable from the point in time of commencement of use of the additional licenses.
- 7.5 CENIT shall be entitled to reasonably adjust the fees for the maintenance services to be provided according to these *General Terms and Conditions for the Maintenance of Software* subject to three months' prior notice with effect as of the beginning of a calendar year in order to compensate increases in wage costs and other costs. If the increase exceeds 5%, the customer shall be entitled to terminate the Maintenance Agreement subject to one month's notice with effect as of the beginning of the new calendar year.
- 7.6 With regard to the billing and payment of the maintenance fees, the provisions of the *General Terms and Conditions for Deliveries and Services* of CENIT apply additionally.

8. Term, Termination

- 8.1 The obligation of CENIT to provide the maintenance services under this Maintenance Agreement shall commence with the delivery of the software or, if installation by CENIT is agreed upon, with the day of installation.
- 8.2 This Maintenance Agreement is concluded for an indefinite period of time. After the expiration of a minimum term of twelve months, it may be terminated by either party subject to three months' prior notice with effect at the end of a calendar year
- 8.3 To the extent that the maintenance services can be divided, the partial termination of the Maintenance Agreement with regard to individual software products shall be possible. In this case, the maintenance fees will be reduced proportionately by the amount attributable to the terminated maintenance services.
- 8.4 To the extent that the maintenance services are provided in connection with a license for CENIT Software that is limited in time, a termination of the Maintenance Agreement without concurrent termination of the license shall not be possible. The termination of the license shall be governed exclusively by the provisions of the *General Terms and Conditions for Software Licenses* of CENIT.
- 8.5 The Maintenance Agreement shall end without notice of termination being required if the license granted to the customer for the software to be maintained ends according to the respectively applicable license conditions, in the case of CENIT Software, according to the *General Terms and Conditions for Software Licenses* of CENIT. In this case, CENIT is not obligated to reimburse maintenance fees already paid for periods of time until the termination.
- 8.6 The right to terminate the Maintenance Agreement with immediate effect for cause shall not be affected.
- 8.7 All notices of termination must be given in writing.

9. Other Provisions

9.1 Upon prior notification, CENIT shall be entitled to provide parts of the maintenance services through or with the help of third enterprises.

9.2 To the extent that these *General Terms and Conditions for the Maintenance of Software* do not contain any special or deviating provisions, the performance of the maintenance services and the legal relation between CENIT and the customer shall additionally be governed by the *General Terms and Conditions for Deliveries and Services* of CENIT.