

General maintenance conditions for software

(APS, July 2011)

1 Area of application

Peak Solution undertakes to provide for its customers the maintenance services selected in the maintenance contract for the software specified there, and for all subsequent add-ons during the terms of the contract.

2 Contents and scope of maintenance services

2.1 The following can be stipulated as maintenance services:

- Acceptance of error messages (item 3)
- Error analysis and rectification (clause 4)
- Delivery of updates (clause 5)
- Delivery of upgrades (clause 6)
- Customer-specific software support (clause 7)

2.2 Peak Solution always provides the agreed maintenance services from its Nuremberg location by telephone, email or remote maintenance, provided that no different agreements exist for individual maintenance services. The customer creates the technical prerequisites for these services on his premises as required, at his own cost.

2.3 In each case, only the current version of the software is maintained, i.e. during the term of the maintenance contract the customer undertakes to install all upgrades and updates offered by Peak Solution. If a maintenance contract for software is not concluded at the same time as the acquisition of the software, it must be ensured by the customer that the current version of the software in each case is available on his system. If necessary, an update to the current version of the software may be required at the owner's expense.

2.4 Peak Solution provides the maintenance services exclusively during the following Service times (CET):

Monday to Thursday:	08:30 to 12:00 13:00 to 16:00
Friday:	08:30 to 12:00 13:00 to 15:00

Peak Solution is not under obligation to provide maintenance services on bank holidays in Bavaria and on December 24 and 31.

3 Acceptance of error messages

- 3.1 In case of errors, the customer shall inform the Support Team of Peak Solution either via email to a defined address or by entering an error message into the support system available online.
- 3.2 Error messages must contain the exact designation of the software license and version number, and of the equipment. Furthermore, the location and time that the error occurred must be specified, together with an exact error description that will allow the support team to reproduce the error.
- 3.3 For access to the support access system available online, the customer appoints a contact person and a representative with last name, first name and e-mail address. This person is entered by the support team as "problem reporter". Error messages via the support access system are monitored by the support team during the term of service (clause 2.4).
- 3.4 Only employees may be appointed by the customer as "problem reporters", who have in-depth knowledge of the products (administrator knowledge), and are therefore in a position to report errors in a technically qualified manner. For this purpose, employees should receive an administrator and/or developer training from Peak Solution.
- 3.5 The customer will forward to the support team those queries that he cannot deal with himself, and which correspond to the agreed support level. The customer shall support Peak Solution comprehensively, in particular through the coordination of similar service queries, the clarification of user problems that are the result of incorrect operation, assistance with error messages on the user side, and through the storage and transmission of the data of program copies that enable or facilitate error analysis, as well as through remote access to the malfunctioning system.

4 Error analysis and rectification

- 4.1 Any errors that occur are assigned by the support team, in consultation with the customer; to the following error classes:
- Error class 1 (serious): Errors that stop the process
A serious defect that prevents the entire application from being operated; causing a failure of core processes in the application area.
 - Error class 2 (medium): Errors that obstruct the process
Lower quality defect. Although use of components or of the system is restricted, operation is ensured despite the fault. The error can be circumvented with resources that are reasonable for the customer.

- Error class 3 (minor): other errors
Minor defect that has no significant influence on the designated use of the system. Use of the system is not restricted, or only negligibly so.
- 4.2 During service hours (item 2.4), the support team in support cases undertakes, depending on the error class, to begin the error analysis and error rectification within the following response times:
- Error class 1: Response time 8 hours after error message has been received.
 - Error class 2: Response time 24 hours after error message has been received.
 - Error class 3: Response time 48 hours after error message has been received.
- 4.3 If the error message is received outside service hours (item 2.4), then the response time starts with the beginning of service hours on the next working day. If the error message is received during service hours, a response time that has not yet expired by the end of the service hours for this day will continue from the start of service hours on the next working day.
- 4.4 In order to perform support services, it is necessary that the customer grants remote access to the system to be maintained. Insofar as the support team, in the context of maintenance, is given the opportunity to access personal data, Peak Solution will take the necessary precautions concerning data security, in accordance with § 11 clause 5 BDSG (German Federal Data Protection Act), in coordination with the respective accountable body, if necessary through the mediation of the contractual partner.
- 4.5 The rectification of errors in the software and /or measures to avoid the repetition of the error and /or measures to eliminate the error being performed can occur through instructions given over the phone, the conveyance of a written procedure description, the delivery of a software supplement, delivery of a new release or a supplement to the incorrect pages in the manual. In case of errors in error class 3 it is possible that these will only be rectified with the next software release.
- 4.6 The customer will accept the new program releases offered or provided by Peak Solution for the purpose of rectifying the error, provided this is acceptable for him.
- 4.7 If it should transpire during the processing of an error message and fault analysis that the error reported by the customer does not exist or is caused by circumstances outside the maintained software, then Peak Solution is entitled to charge for the processing of the error message and fault analysis according to its current price list.
- 4.8 If it should transpire during the processing of an error message that the problem has been rectified in a later version, then the support team concludes its error processing with reference to the update possibility.

5 Delivery of updates

- 5.1 Peak Solution makes new program releases available to the customer (updates). As well as error corrections, new program releases may contain minor functional improvements/functional extensions.

This does not include new performance components and program modules with new functionalities.

- 5.2 The customer obtains the new program releases in machine code, and where required, with a supplement to the user manual.

6 Delivery of upgrades

- 6.1 Peak Solution makes available to the customer new versions of the software (upgrades) with further developed functionalities and new performance features.

New performance features and functional supplements that are not contained in the current user license, and which are liable to charge according to the current price list of the manufacturer, are not included in an upgrade.

- 6.2 Software upgrades are also used to adjust the software specified in the maintenance contract to the respective follow-up releases of the operating system or database system released by the manufacturer and to be made available to the customer. If the manufacturer has released software for a specific release of an operating system or database system, this release does not automatically apply to the follow-up releases of the operating system or database system. Insofar as this is possible with costs that are economically feasible, Peak Solution will, however, adjust the software to the follow-up releases of the operating system or database system so that these can be deployed under the modified operating software or database within a reasonable period of time.

- 6.3 is omitted

- 6.4 The customer undertakes to check the compatibility of his hardware and software components with the new software components provided. Prior to the installation of a new program version, the customer shall adjust his hardware in accordance with possible changed hardware specifications. Prior to the installation of a new program version, the customer shall adjust his system environment in accordance with possible changed specifications.

- 6.5 The customer obtains the new program versions in machine code, and where required, with a supplement to the user manual.

7 Customer-specific software support

Insofar as it is not otherwise agreed in the maintenance contract, the customer-specific software support contains the following services:

- System monitoring (e.g. regular evaluation of log files and implementation of function tests)
- Start-up activities (e.g. installing updates and upgrades)
- Performing small changes to the customer-specific configuration (customizing) and implementing minor development
- Holding workshops and training sessions
- Eliminating errors that have occurred through
 - influences from third-party facilities, equipment and accessories,
 - interventions by third parties who were not authorized to do so by Peak Solution,
 - breach of the customer's duty of care and notification obligations,
 - faults in the energy supply or faults that are the result of technical, climatic and room conditions of the environment where the products are situated,
 - force majeure, burglary, vandalism, fire, water, etc.,
 - the installation of software updates for such systems that communicate with the software,
 - malfunctions to products not supplied by Peak Solution,
 - rectification of damage and malfunctions caused by products not supplied by Peak Solution,
 - change to the system environment and to interfaces (e.g. new server or PC, change to the operating system or system programs, version changes to connected systems, etc.),
 - operating error or improper handling.

8 Remuneration and conditions of payment

- 8.1. Provided that nothing else is agreed in the maintenance contract, the customer pays an annual fee for the flat-rate maintenance services agreed in the maintenance contract (items 3, 4, 5 and 6).
- 8.2 The annual fee is due in advance as per January 1st of each new calendar year. If the maintenance contract does not begin on January 1st of a year, the maintenance fee is calculated proportionately for each month started from the beginning of maintenance to the end of the calendar year. This maintenance fee is also due in advance with the beginning of the maintenance contract.
- 8.3 For additional services agreed in the maintenance contract (item 7), one or more expense allocations and corresponding hours or daily rates are defined. Billing for these services is done monthly, according to actual expenditure on an hourly basis, corresponding to the activities documented in performance records. A manday is 8 hours.
- 8.4 Services at the customer's location that are requested by the customer always require a separate agreement and are charged on a time basis in accordance with the daily rates specified in the maintenance contract. Provided that nothing else is agreed in the maintenance contract, expenses and travel costs incurred are charged separately, in accordance with fiscal guidelines in Germany. Travel costs are calculated from the Nuremberg location in each case.
- 8.5. Peak Solution is entitled to raise prices annually for maintenance, giving three months notice, for the first time at the end of the first full year. If the payment is raised by more than 10%, the customer is entitled to cancel the maintenance agreement with a notice period of two months.
- 8.6. If the customer subsequently acquires further software licenses, software add-ons, software modifications or hardware devices, these are automatically included in the software maintenance from the time they are used. The maintenance fee increases from the month following the beginning of usage by the amount of the maintenance fee, currently valid in each case. The maintenance contract is modified accordingly.
- 8.7 Peak Solution has the right to refuse services if payment is not made in due time.

9 Granting rights for maintenance services

- 9.1 Peak Solution grants the customer the right to use the work results of maintenance services, new program releases and program versions in accordance with the main contract on which the license of the software or product is based. Rights that go any further are ruled out.

- 9.2 Provided that it is not agreed otherwise in the main contract, the customer has the nonexclusive right, unlimited in time and territory, to use the work results for his own purposes and in his own company. A lease, surrender of goods or use through and for third parties, timesharing usage, usage in the context of online service provision (ASP) and computer center activities or any other use of the work results, for payment or not, by third parties requires the explicit agreement of Peak Solution. Equally, the agreement of exclusive usage rights requires an explicit written agreement of the contractual partners. Software that Peak Solution has passed on to the customer for nonexclusive use for an indefinite period of time may only be forwarded to others in its entirety, and only if the customer himself deletes the software and all copies of this that he has, and the third-party undertakes to adhere to the usage regulations. Upon request by Peak Solution the customer shall verify that he has deleted his copies and submit the declaration of the third-party to Peak Solution.
- 9.3 After the installation of a new program release, the usage rights for the previous program release are no longer valid. The customer may retain the directly preceding program release after the end of productive usage for documentation purposes and for emergencies.

10 Material and legal defects

- 10.1 Material defects are eliminated during the term of the maintenance contract in the context of the rectification of errors in accordance with item 3. Otherwise the warranty is determined by the stipulations of the license agreement and in accordance with item 10 of the General Terms and Conditions of Service of Peak Solution.
- 10.2 If Peak Solution does not succeed in rectifying the material defect or defect of title within a reasonable period of time, the customer is entitled, upon the unsuccessful expiration of a further term set by him, to reduce the maintenance fee or to exercise the extraordinary cancellation of the contract.
- 10.3 Flaws that cause only an inconsiderable reduction of the usability of maintenance services do not entitle the customer to reduce fees or cancel the contract.

11 Limitation period of maintenance services

- 11.1 Claims of the customer because of material defects or defects of title lapse within one year from the delivery of each program release. In the event that a defect in title consists of a material right of any third party entitling such third party to claim the surrendering of the software, the statutory periods apply.
- 11.2 For other claims of the customer from the contract or from any other breach of obligation, a term of limitation of one year from the start of the statutory limitation period shall apply. The claims lapse at the latest with the expiry of the maximum statutory periods.

- 11.3 In case of personal injury (including infringement of liberty), as well as intent or gross negligence, the statutory terms of limitation shall apply.

12 Contract duration and termination

- 12.1 The maintenance contract is concluded for a period of at least 12 months, in the first year to December 31st of the following year. The contracts are extended by a further 12 months if they are not terminated by the contractual partners with three months notice to the end of the calendar year.
- 12.2 Every termination must be in writing for it to be valid. The right to terminate the contract for good cause remains reserved.

13 Miscellaneous

- 13.1 The transfer of rights and obligations from this contract requires the agreement of Peak Solution.
- 13.2 This contract is subject to German law.
- 13.3 The place of jurisdiction is Nuremberg.
- 13.4 Changes and additions to this contract must be made in writing. This also applies to changes to this provision.
- 13.5 Should individual provisions of this contract in whole or in part not be legally valid, or become unenforceable, then the validity of the remaining provisions of this contract is not affected by this. The same shall apply in case the contract is found to be incomplete. In place of the ineffective or inapplicable provision, or in order to fill any gaps, an appropriate provision shall apply which, as far as is legally possible, most closely corresponds to what the contractual partners would have wanted, if they had considered that point when they signed the agreement.

Dated July 2011