

## **SOFTWARE MAINTENANCE AGREEMENT**

Please read this software Maintenance Agreement (the "Maintenance Agreement") carefully before using the software. Initial use of the system or the software indicates your acceptance of these terms.

WHEREAS, INNOWERA LLC ("INNOWERA"), has developed the SOFTWARE and Support Materials identified in Supplement A; and

WHEREAS, the you ("RECIPIENT") have evaluated the SOFTWARE and has expressed interest in using and purchasing this system; and

WHEREAS, the RECIPIENT wishes to engage INNOWERA to perform maintenance services in connection with the SOFTWARE and Support Materials and INNOWERA desires to provide such maintenance services;

WHEREAS, the RECIPIENT has executed or has agreed to execute the License Agreement for the SOFTWARE; and

NOW THEREFORE, in consideration of the mutual promises and agreements set forth in this Maintenance Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, INNOWERA and RECIPIENT, intending to be legally bound, hereby agree as follows:

### **1. Maintenance Services**

In accordance with the terms of this Maintenance Agreement, INNOWERA will furnish various support and maintenance services as identified on Supplement A (the "SERVICES") for the SOFTWARE. These SERVICES will not be on-site and will be provided via web, e-mail or phone as required.

### **2. Maintenance Fee and Expenses**

(a) Fees: RECIPIENT will pay INNOWERA the fee(s) as agreed upon in the price quotation. The INNOWERA shall have the right to change the fee once each year, effective with the next renewal date, provided that: (i) INNOWERA gives RECIPIENT at least thirty (30) days prior written notice of any such change; and (ii) is guaranteed not to increase from the initial agreed-upon rate for the first 2 years. RECIPIENT shall pay INNOWERA for services outside the scope of this Maintenance Agreement on a time and material basis at INNOWERA's then-prevailing rates, and only with RECIPIENT's prior written approval. RECIPIENT is responsible for the payment of any taxes assessed in connection with payments due under this Maintenance Agreement, except for any tax based solely on the INNOWERA's net income.

(b) Expenses: SERVICES will be provided via web, e-mail or phone as required. In case on-site SERVICES are required or requested by RECIPIENT and upon RECIPIENT's prior written approval, RECIPIENT shall reimburse INNOWERA for any and all reasonable travel and living expenses incurred by INNOWERA in performing on-site SERVICES under this Maintenance Agreement.

Upon termination of this Maintenance Agreement, INNOWERA will be reimbursed for all reasonable costs and non-cancelable commitments incurred in the performance of the scope of work and for which the RECIPIENT has not yet paid.

### **3. Term and Termination**

(a) Term: This Maintenance Agreement shall commence on the date Effective Date and shall continue for an initial term ("INITIAL TERM") of twelve (12) months, unless sooner terminated as provided in this Agreement. This Maintenance Agreement shall thereafter renew for another twelve months (each, a "RENEWAL TERM") each subsequent year on the anniversary of the Effective Date, of which INNOWERA will notify RECIPIENT in writing at least thirty (30) days prior to the expiration date, unless terminated by either Party upon written notice to the other Party pursuant to Section 3(b) below. All terms and conditions of this Maintenance Agreement shall apply during the RENEWAL TERMS, except for the fee(s). The fee(s) for the RENEWAL TERMS shall be governed by Section 2(a) above.

(b) Termination: This Maintenance Agreement shall terminate (i) immediately upon termination or expiration of RECIPIENT's right to use the SOFTWARE; (ii) upon expiration of the then-current initial or renewal term, provided that at least thirty (30) days advance written notice of termination is given to INNOWERA by the RECIPIENT; (iii) upon expiration of the then-current initial or renewal term, provided that at least sixty (60) days advance written notice of termination is given to RECIPIENT by INNOWERA; or (iv) upon thirty (30) days advance written notice if the other party has breached this Maintenance Agreement and has not cured such breach within such notice period.

### **4. Warranty and Remedies**

INNOWERA warrants that it will use all commercially reasonable efforts to perform the SERVICES to conform to generally accepted industry standards, provided that: (a) the SOFTWARE has not been modified, changed, or altered by anyone other than INNOWERA; (b) the operating environment, including both hardware and systems software, meets INNOWERA's recommended specifications; (c) the computer hardware is in good operational order and is installed in a suitable operating environment; (d) RECIPIENT promptly notifies INNOWERA of its need for service; (e) RECIPIENT provides adequate troubleshooting information and access so that INNOWERA can identify and address problems; and (f) all fees due to INNOWERA have been paid. THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS MAINTENANCE AGREEMENT, AND THE SERVICES TO BE PROVIDED BY INNOWERA UNDER IT INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. RECIPIENT's sole and exclusive remedy and INNOWERA's only obligation under this warranty is to redo the SERVICES until the SOFTWARE conforms to the most recent specifications stated in the documents listed in Supplement A. In the event that these SERVICES cannot be provided within a reasonable time after notification, RECIPIENT's sole and exclusive remedy is to terminate this Maintenance Agreement upon written notice to INNOWERA and to receive a refund of any fees paid for the period beginning on

the date the problem requiring correction was reported to INNOWERA. RECIPIENT ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES SHALL THE INNOWERA, IT'S OFFICERS, EMPLOYEES OR IT'S AGENTS BE LIABLE FOR ANY LOSS, COST, EXPENSE, OR DAMAGE TO RECIPIENT IN AN AMOUNT THAT COLLECTIVELY EXCEEDS THE ANNUAL MAINTENANCE FEE. END USER ACKNOWLEDGES AND AGREES THAT THE INNOWERA OR ITS AGENT SHALL NOT BE LIABLE TO END USER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL DAMAGES OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS OR LOST DATA ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE EVEN IF INNOWERA, IT'S OFFICERS, EMPLOYEES OR IT'S AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **5. Recipient Cooperation**

The level of support that INNOWERA can provide is dependent upon the cooperation of RECIPIENT and the quantity of information that RECIPIENT can provide.

If INNOWERA cannot reproduce a problem or if the RECIPIENT cannot successfully gather adequate troubleshooting information, INNOWERA may need temporary login access on the RECIPIENT's system to identify and address the problem.

#### **6. Recipient Responsibility**

The RECIPIENT shall not distribute the SOFTWARE to any third party. The RECIPIENT shall not make any modifications to the SOFTWARE, unless otherwise allowed under the License Agreement. If RECIPIENT is allowed to make modifications under such License Agreement, INNOWERA shall not be responsible for maintaining RECIPIENT modified portions of the SOFTWARE or for maintaining portions of the SOFTWARE affected by RECIPIENT modified portions of the SOFTWARE. Upon RECIPIENT's prior written approval, corrections for difficulties or defects traceable to the RECIPIENT's errors or systems changes shall be billed at INNOWERA's standard time and material charges.

#### **7. Right to Work Product**

All error corrections, enhancements, new releases, and any other work product created by INNOWERA creator(s) in connection with the SERVICES provided under this Maintenance Agreement ("WORK PRODUCT") are and shall remain the exclusive property of INNOWERA or INNOWERA creator(s), regardless of whether the RECIPIENT, its employees, or agents may have contributed to the conception, joined in its development, or paid INNOWERA for the development or use of the WORK PRODUCT. Such WORK PRODUCT shall be considered SOFTWARE, and subject to the terms and conditions contained herein and in the License Agreement.

#### **8. General**

(a) Each party acknowledges that this Maintenance Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreement, oral and written, between

- the parties relating to this Maintenance Agreement. This Maintenance Agreement may not be modified or altered except by a written instrument duly executed by both parties.
- (b) This Maintenance Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Texas, United States of America.
  - (c) If any provision of this Maintenance Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.
  - (d) The RECIPIENT may not subcontract, assign, or transfer its rights, duties or obligations under this Maintenance Agreement to any person or entity, in whole or in part, without the prior written consent of INNOWERA.
  - (e) The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.
  - (f) The RECIPIENT may not directly or indirectly hire or contact for the purpose of hiring any employee or contractor of INNOWERA without prior written permission of INNOWERA. This sub-clause shall survive for 1 year after termination of this agreement.

RECIPIENT ACKNOWLEDGES THAT END USER HAS READ THIS MAINTENANCE AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE LEGALLY BOUND BY IT.

## **Supplement A to SOFTWARE MAINTENANCE AGREEMENT**

### **Coverage of Maintenance Agreement**

The SOFTWARE covered by this Maintenance Agreement is as follows:

- Process Runner and any future version offered by INNOWERA as part of the License Agreement.

The manuals, and other written materials furnished by INNOWERA for use with the SOFTWARE (the "DOCUMENTATION") are:

- Process Runner Help System
- Process Runner User Guide

### **Support Policy Descriptions**

In accordance with the terms of this Maintenance Agreement, INNOWERA will furnish one or more of the following support services (the "SERVICES") for the SOFTWARE. SERVICES mentioned under policy 1, 2 and 3 are included. Other SERVICES mentioned under other policy numbers can optionally be added for an additional charge and are applicable only if and when purchased.

#### **Support Policy #1: Installation and Connectivity (Included)**

Support for the proper installation of the current release of the SOFTWARE and any subsequent patches or updates to the version. At this support level, INNOWERA will ensure that the RECIPIENT's installation is successful and appropriate licenses are operational. If License Server is supplied, INNOWERA will furnish help and documentation for successful connection to License Server.

#### **Support Policy #2: Basic Operation and Explanation of Functionality (Included)**

Support for understanding basic operation of the SOFTWARE. Support for various features and functionality of the SOFTWARE. At this support level, INNOWERA will explain or direct RECIPIENT to documentation, procedure, flash video recording or provide a suitable example if readily available to explain part of the SOFTWARE or functionality of the SOFTWARE. However, INNOWERA is under no obligation to resolve or provide a solution for a specific problem that RECIPIENT is attempting to solve.

#### **Support Policy #3: Product Updates (Included)**

During the term of this Agreement, INNOWERA will maintain the SOFTWARE by providing software updates and enhancements to RECIPIENT ("UPDATES"). All UPDATES provided to RECIPIENT by INNOWERA pursuant to the terms of this Maintenance Agreement shall be subject to the terms and conditions of the License Agreement between the parties. UPDATES will be provided on an as-available basis and include the items listed below:

- 1) Bug fixes;
- 2) Enhancements to keep current with changes in SAP release and Excel versions or as INNOWERA makes enhancements;
- 3) Enhancements to keep current with the current OS releases, as available from INNOWERA, provided that the current OS release is

- both binary and source-compatible with the OS release currently supported by INNOWERA; and
- 4) Performance enhancements to the SOFTWARE.

UPDATES do not include:

- a) Platform extensions including product extensions to (i) different hardware platforms; (ii) different windowing system platforms; (iii) different operating system platforms that are not licensed by RECIPIENT; and
- b) New functions such as (i) new methods in the SOFTWARE to update or extract data in SAP; (ii) new module; (iii) new applications; and (iv) new reporting tools.

UPDATES will be provided in machine-readable format and updates to related DOCUMENTATION will be provided in soft copy form. All such deliveries shall be made by an electronic communication. Duplication, distribution and installation of UPDATES are the responsibility of RECIPIENT. If requested, INNOWERA will provide on-site assistance in the installation of UPDATES on a time and materials basis, plus expenses.

INNOWERA assumes no responsibility for the correctness of, performance of or any resulting incompatibilities with, current or future releases of the SOFTWARE if the RECIPIENT has made changes to the system hardware/software configuration or modifications to any supplied source code which changes affect the performance of the SOFTWARE and were made without prior notification and written approval by INNOWERA. INNOWERA assumes no responsibility for the operation or performance of any RECIPIENT written or developed processes and application. It is RECIPIENT's responsibility to test the UPDATES before productive use and deployment and request the support SERVICES if any issues are encountered.

INNOWERA shall be responsible for providing technical support and correcting errors for the most recent release of the SOFTWARE provided to RECIPIENT; additionally, INNOWERA shall continue to support the three (3) immediately prior releases for a reasonable period, not to exceed twelve (12) months in total. After this time, INNOWERA shall have no further responsibility for supporting and maintaining the prior releases.

**Support Policy #4: Process Design Support (Optional)**

At RECIPIENT's request, INNOWERA may provide Process Design Support to implement one or more business processes at such charge and on such schedule as the parties may mutually agree in writing. One example would be to implement Sales Order creation process using the SOFTWARE.

**Support Policy #5: Customized Project (Optional)**

At RECIPIENT's request, INNOWERA will consider developing modifications or additions that materially change the utility, efficiency, functional capability, or application of the SOFTWARE at such charge and on such schedule as the parties may mutually agree in writing. One example would be to customize SOFTWARE to meet line level restriction for data extraction as per RECIPIENT's business requirements.

### **Support Communication Channels**

The INNOWERA will provide the following communication mechanisms for the RECIPIENT to use when asking for support:

(a) Ticket Portal: RECIPIENT can create trouble tickets using support ticket web portal.

(b) Email: RECIPIENT can send support requests to INNOWERA's designated support e-mail address.

(c) Telephone: RECIPIENT can call INNOWERA to report errors and open support requests for any Critical priority issues or if Ticket Portal and Email communication is impacted between RECIPIENT and INNOWERA.

### **Support Hours and Point of Contacts**

(a) Business Hours: Any Monday to Friday excluding US Bank holidays will be considered Business Day ("Business Day"). 9 AM to 5 PM Central US Time on any Business Day will be considered regular Business Hours ("Business Hours"). Support can be requested 24 x 7 via Ticket Portal, E-mail or Telephone and will be considered received when successfully reported by RECIPIENT to INNOWERA or its system. If Support requests are made after Business Hours, it will be considered requested on the next Business Day.

(b) RECIPIENT Support point of Contacts: RECIPIENT agrees that its point of contact for maintenance and support of the SOFTWARE will be limited to two (2) designated employees of RECIPIENT at any one time, who will act as the support liaison between INNOWERA and RECIPIENT.

### **Timeliness of Incident Resolution**

INNOWERA shall use all commercially reasonable efforts to provide modifications or additions to correct errors in the SOFTWARE reported by RECIPIENT under the conditions described in Section 5, "Recipient Cooperation". Upon receipt of request for SERVICES, INNOWERA will assign a priority level as determined by the RECIPIENT to the error according to the following criteria:

(a) Critical Priority: An error that results in the SOFTWARE being substantially or completely nonfunctional or inoperative.

(b) High Priority: An error that results in the SOFTWARE operating or performing other than as represented in the DOCUMENTATION, but which does not have a material adverse impact on the performance of the SOFTWARE.

(c) Medium Priority: This is the default priority of all the requests, unless it is agreed to be otherwise.

(d) Low Priority: This priority will be designated for nice to have features, extension or improvement in relation to the SOFTWARE or the DOCUMENTATION.

INNOWERA will use all commercially reasonable efforts to correct the error or provide a work-around solution for each priority level and, if a work-around is the immediate solution, will use all commercially reasonable efforts to provide a final resolution of the error. Commercially reasonable efforts will be made to respond to the incident within the following time frames after receiving notice and sufficient information from the RECIPIENT:

Priority Level	Acknowledgement Time	Response Time
Critical	2 Hours	1 Business Day
High	1 Business Day	2 Business Days
Medium	2 Business Days	2-4 Business Days
Low	2 Business Days	3-7 Business Days