

General Terms and Conditions

for Maintenance and Support of Term-Based Software Products of AppSphere AG (Hereinafter: AppSphere)

Area of application

(1) These conditions apply to the maintenance and support for the software products developed and distributed by AppSphere itself (hereinafter the "software"). The maintenance and support services do not include the measures necessary to maintain the condition of the software required for its contractual use, in particular, they do not include the elimination of defects of the software. These measures are based exclusively on the Term-Based Licence Agreement (see. § 1. (2)). The reaction times in terms of error messages are, however, based on these General Terms and Conditions.

(2) The prerequisite for obtaining maintenance and support is a legal term-based licence agreement for software.

(3) These General Terms and Conditions, in the version valid at the time of the awarding of the contract, shall apply exclusively to the business transactions between the parties, unless the parties agree otherwise in writing. Any other contractual conditions do not form part of the contract, even if AppSphere does not expressly reject them in individual cases.

§2 Nature and scope of the contract

(1) The contract refers to the software listed in the contract, which is to be maintained and supported in accordance with the provisions of the contract. AppSphere's maintenance and support obligations apply only in relation to the most recent version of the software supplied by AppSphere. The customer has no right to maintenance and support from AppSphere for older versions of the software. If the customer wishes to have support services for an older version of the software, this must be agreed in a separate agreement with AppSphere.

(2) Support will be provided for software which has been amended by the customer or a third party only insofar as such amendment has been agreed in writing by AppSphere and the contracting parties have agreed an appropriate remuneration adjustment.

(3) AppSphere is entitled to use subcontractors (e.g. authorised partners) to perform the implementation of software updates.

(4) The provision of any additional services requires a separate agreement in each case. Remuneration for such additional services will be based on the AppSphere price list in force at the time of the service provision, insofar as the parties do not agree otherwise in writing.

§3 Term of the contract

(1) The term of the contract is based on the Term-Based Licence Agreement. This contract will be terminated with the termination of the Term-Based License Agreement.

§4 Nature and extent of the services offered

Unless agreed otherwise, AppSphere will provide the following services:

(1) Download Service for new program versions

(2) Provision of:

- Adjusted documentation.
- Information on the internet for the customer about available supplements to and enhancements of the software.
- Knowledge Base: Internet support via a troubleshooting database with suggestions for workarounds

(3) Support services provided by AppSphere

AppSphere provides the following support services for the software:

- Access to a special website to gather information (FAQ) at <http://support.appsphere.com/forums> ,
- Email support via support@appsphere.com ,
- Telephone support during service hours on +49 7243 34887 89

AppSphere is entitled to change the above-mentioned service contacts and to provide the customer with other reasonable contact points and means of communication. AppSphere will inform the customer of its intention to adopt such a measure at least two weeks in advance. Error messages transmitted by other means of communication are not contractual; the deadlines for response times in accordance with Clause. (5) will not begin to run when other means of communication are used by the customer. .

The contractual services will be provided from Monday to Friday, except on holidays celebrated across the Federal Republic of Germany, from 8.00 am until 17:00 pm CET ("service hours").

The support services are divided into 1st level, 2nd level and 3rd level support.

1st Level Support includes:

- Initial acceptance and recording of support requests, dispatcher functions

- Classification of support requests into Severity Level, priorities and problem categories
- Assistance with installation and configuration
- First problem and error classifications based on configuration and log information etc.
- Managing of support requests, problem escalation, documentation

2nd Level Support includes:

- Qualified problem and error analysis, if necessary, with the support of diagnostic tools
- Reconstruction of problems and error situations on test systems under laboratory conditions.
- Creation of a professional description of the problem or fault.

3rd Level Support includes:

- Quick and comprehensive failure analysis for problems in Severity Level 1 and Severity Level 2 (see also Fig. 5)
- Quick and comprehensive failure analysis for problems in Severity Level 3 and Severity Level 4 (see also Fig. 5)
- Provision of workarounds
- Fixing of software defects

(4) On-site support

As far as the parties agree this separately, the customer is entitled to on-site support by a product specialist as required in the event of problems and product defects in the operating environment of the customer and which cannot be resolved / eliminated by telephone and internet support. The on-site support is available during service hours, at the earliest within 48 hours after a written order by the customer and is invoiced as a separate individual order.

(5) Error classes and response times

AppSphere will seek the solution of the displayed software errors by providing corrections or will support the customer in resolving error conditions and problems in the 3rd level support according to the following classification:

Severity level 1 – Critical Business Impact

The software is either not functioning or its functionality is severely impaired or server downtime leads to interruption / inability to use the software on systems on customers' premises. This does not apply to scripts which the customer has created himself for use with the software.

Severity level 2 – Significant Business Impact

The software's essential features may be either unavailable or severely limited. The impairment causes malfunctions or reduced availability on systems at customers' premises. This does not apply to scripts which the customer has created himself for use with the software.

Severity level 3 – Some Business Impact

The software may be affected in its essential functions, but a temporary workaround is available, or the software may be affected in its subordinate functions. The impairment leads to mildly impaired usability in its functionality on systems at customers' premises. This does not apply to scripts which the customer has created himself for use with the software.

Severity level 4 – Minimal Business Impact

A subordinate partial function of the software is impaired. The impairment does not lead to restrictions on the use or the functionality of systems at customers' premises. This does not apply to scripts which the customer has created himself for use with the software.

The reaction times are:

- Severity level 1 - Critical Business Impact usually within 24 hours
- Severity level 2 - Significant Business Impact usually within 48 hours
- Severity level 3 - Some Business Impact usually within 3 working days
- Severity level 4 - Some Business Impact usually within 5 working days

Problems or errors will be categorised at the discretion of the AppSphere support team staff.

§5 Remuneration

- (1) The amount of the annual remuneration is 25% of the list price of the Term-Based Licence Contract.
- (2) The compensation is invoiced in advance in invoice, unless an annual instalment payment plan has been agreed.
- (3) All periods for payment begin with the date of invoice. Unless otherwise agreed, the invoice amount is due for payment without deductions within 14 days from the date of the invoice.
- (4) If the customer is in default with regard to a payment, whether wholly or partly, AppSphere shall be entitled to charge, from the relevant date onwards, interest calculated at the statutory interest rate of 9% per annum above base rate. The right to claim further damages is reserved.

§6 The Customer's Obligations to Cooperate

- (1) The customer shall support AppSphere in every respect in the fulfilment of the contractual obligations.
- (2) The customer must, at the request of AppSphere, set up remote access to all IT systems on which the software is running, insofar as this is necessary for the performance of the contractual services.
- (3) The customer is obliged to ensure proper data backup. In particular, he is obliged to make a backup immediately before the setting up or implementation of maintenance services and to keep all data used or generated in connection with the software available in machine-readable form

as a backup copy. This will enable a reconstruction of any lost data to me made at a reasonable cost.

(4) The customer is obligated to set up first-level support systems within his company, which should deal with most of the service requests from the software users. First level support must be able, insofar as is possible, to be able to handle independently the service requests from the software users, and should relay to AppSphere through the person in charge appointed by the customer, only those service requests which he cannot successfully handle himself. First level support is responsible for recording in full all requests from the software users and for obtaining all the necessary information from the software users.

(5) The customer must ensure that the AppSphere employees who are sent to the customer's premises to provide on-site support services, which are ordered individually, will have free access to the relevant computer and the software at the agreed time. The customer will ensure that during this software support service on site a suitably qualified member of the customer's staff is available to provide support at the installation site.

(6) The obligations to cooperate described above form essential contractual obligations. If the customer infringes his obligations to cooperate, he must compensate AppSphere for the resulting additional expenditure incurred, in accordance with the prices contained in AppSphere's current price list, unless the customer is not responsible for the infringement of the duty to cooperate.

§7 Confidentiality, data protection

(1) Both AppSphere and the customer are obliged to maintain confidentiality in respect of each other's confidential information, trade and business secrets, which they obtain during the performance of this contract. In particular they oblige not to divulge such confidential information to third parties or to exploit it otherwise than for the contractual purposes.

(2) Insofar as AppSphere processes personal data in the course of service delivery for which the customer is the responsible authority or if access to such personal data cannot be excluded, the contractual partners will conclude an agreement in advance on the data processing for the contract which conforms with all the relevant statutory requirements.

§ 8 Rights to use the software

(1) Under the provisions of this contract, AppSphere grants the customer usage rights in respect of the software to the extent described in the Term-Based License Agreement. The customer may, however, always use only the latest version of the software.

§10 Infringements of intellectual property law

(1) If a third party makes claims against the customer because the infringement of intellectual property rights by the software and if the use of the software is hereby impaired

or forbidden, AppSphere shall give an assurance that it will provide a legally valid way to use the software or alternative equivalent software.

(2) The prerequisites for any acceptance of liability under Para. (1) are that the customer immediately notifies AppSphere of any claims by third parties, the alleged copyright violation is not accepted and that any dispute, including any extra judicial settlement, is either handed over to AppSphere to pursue or, at AppSphere's choice, is pursued by the customer in agreement with AppSphere.

(3) If the customer ceases to use the software for reasons of effecting a reduction of damage or any for any other important reason, it is obliged to inform the third party concerned that the discontinuation of use does not imply any acknowledgement of an infringement of any intellectual property right.

(4) If the customer is responsible for the alleged infringement itself, claims against AppSphere are excluded.

§11 Liability

(1) AppSphere will pay damages and compensation for futile expenses, for whatever legal reason only to the following extent:

The liability for acts of deliberate intent and in respect of guarantees is unlimited.

- In cases of gross negligence AppSphere liable to the amount of typical damage, foreseeable at the time of the conclusion of the contract.

- In the event of a negligent breach of a material obligation whose fulfilment is absolutely essential for the proper performance of this contract and on which the customer regularly relies and may rely and whose infringement will put the achievement of the contractual purpose at risk (cardinal obligation), AppSphere will be liable in the amount of typical and foreseeable damage at the time of the conclusion of the contract up to a maximum, however, of

- up to 10, 000 EUROS per incident, but up to a maximum of 50,000 EUROS per contract for financial losses.

- up to 10% of the total value of the contract, but up to a maximum of 100,000 EUROS per contract for financial losses.

- In all other cases of negligent breach of duty, liability is excluded.

- Liability for negligence is also excluded for consequential damages, especially for lost profits.

- In cases of violation of life, body and health and claims arising from the German Product Liability Act, the statutory provisions shall apply without restrictions.

- In cases of data loss, AppSphere shall be held liable only for that expenditure which would have been required for proper data backup by the customer to ensure the restoration of data.

(2) Claims for damages or claims for reimbursement of expenses come under the statute of limitations after two years; this does not apply, however, to claims for damages and reimbursement arising from acts of deliberate intent, gross negligence, claims under guarantee, acts of fraudulent intent, cases involving injury to life, body and health and claims made under the German Product Liability Act.

§12 Miscellaneous

(1) A waiver of any rights or claims or procedural requirements in individual cases or in repeated case contains no relevant waiver for the future.

(2) The place of performance for all obligations arising from the performance or construction of this contract is Karlsruhe.

(3) If the customer is a merchant, legal entity under public law, or public law special fund, the parties agree to be bound by the jurisdiction of the District Court of Karlsruhe. However, AppSphere is entitled to sue the customer at its general forum for this jurisdiction.

(4) The legal relationship between the customer and AppSphere shall be governed exclusively by the provisions of the law of the Federal Republic of Germany law, without giving effect to the principles of conflict of laws and to the exclusion of the UN Convention on the International Sale of Goods.

As of: July 2016

Download service	Provision of new versions of software on the internet by allowing a download to the customer's computer.
Hotline support services	Call-acceptance of software problems and qualified advice is provided during service hours, possibly requiring AppSphere to call the customer back.
Corrective measures	Umbrella term for a workaround, patch program correction/fix and release
Customer	End user or reseller of AppSphere
Patch configuration change	Temporary correction of an error in the software involving modification of the source code.
Program correction / Fix	Correction of a single error in the software's source code.
Response time	Period begins within which AppSphere generally begins maintenance services. It begins with the receipt of the fault report within the agreed service time and expires exclusively during the agreed service times.
Release	Major Release: New or modified important functionalities and fixes in the software (e.g. 4.5.7 → 5.0.0).
	Minor Release: Functional adaptations of the software, due to technology changes introduced by software vendors such as Microsoft and Lotus (e.g. 4.1 → 4.2).
	Service Release: Bundling of several program corrections in the software in a single delivery (e.g. 4.1.a → 4.1.b).
	Beta Release: Fully functional products that have not yet undergone a quality assurance test. The version B1 is a first version, which has successfully passed the basic test. In contrast, the version B2 a version that has successfully passed tests in all complex test scenarios.
Service times	Periods within which the customer is entitled to the provision of services by AppSphere.
Workaround	Temporary bridging of an error in the software without modifying the code (source code or executable code).