

# OptimaJet Workflow Engine .NET Commercial Support Agreement

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OptimaJet Ltd. ("OJLTD") offers support and maintenance services ("Support and Maintenance") for purchase under the following Commercial Support Agreement (the "Support Agreement") by OJLTD customers that maintain a valid commercial license agreement with OJLTD ("Customers") for a OJLTD software product (a "Product").

BY PURCHASING SUPPORT AND MAINTENANCE, EACH CUSTOMER CONSENTS TO BE BOUND BY THE TERMS OF THIS SUPPORT AND MAINTENANCE AGREEMENT.

## 1. Scope.

OJLTD provides support and maintenance services only to OJLTD Customers that have purchased Support from OJLTD (each, a "Subscriber") and solely under the terms and conditions of this Support Agreement. OJLTD has no obligation to provide support other than as set forth in this Support Agreement.

## 2. Fees.

Support is purchased annually (or as may be otherwise agreed to in writing with OJLTD in connection with the purchase of Support by Customer) by paying the applicable Support fee specified by OJLTD (the "Fee"). Payment of the initial Fee is due and payable on or before commencement of Support. The Fee for each successive period during which Support is purchased by Customer thereafter shall be due and payable no later than the last day of the previous period. If a Subscriber allows Support to lapse through non-payment, the Subscriber will be required to pay all Fees that would have been due for the period of such lapse prior to resuming Support. Subscribers purchasing additional Products during the current term of this Support Agreement shall be required to pay additional Fees prior to receiving Support for those additional Products.

## 3. Term.

This Support Agreement will begin upon the start date listed in OJLTD's invoice or other receipt of purchase and will continue until the termination or end date listed in OJLTD's invoice or other receipt of purchase. Thereafter, this Support Agreement will be renewed only upon receipt by OJLTD of payment for the new term.

## 4. Termination.

This Support Agreement will automatically terminate as to any Subscriber: (1) upon termination of the Subscriber's software license agreement with OJLTD; or (2) if Subscriber fails to pay the then current Fee when due or otherwise breaches the terms of this Support Agreement. OJLTD has no obligation to provide Support following termination of any Support Agreement. However, OJLTD reserves the right to provide Support to any Subscriber following termination of that Subscriber's Support Agreement in its sole discretion.

## 5. Covered Software Versions.

Support is provided only for Products that are actively being sold by OJLTD, plus those versions of such Products that have not passed their End-of-Service date (as defined below). If the third-party providers of any software, software framework, platform or operating system that is not included in or with any Product cease to provide support for a specific version of that software, OJLTD will no longer be obligated under this Support Agreement to provide Support for the Product in conjunction with that version.

## 6. End-of-Service Date.

Upon issuing a new release of a Product (a version that contains additional functionality or new features, and is represented by a change in the initial digits of the version number to the left or the right of the first decimal point), OJLTD will no longer issue enhancements for previous releases, nor sell previous releases, of that Product, except to Customers with a current Support Agreement. If a problem arises with a previous release, OJLTD may, at its sole discretion, either (1) recommend a workaround, (2) issue a patch for the previous release, or (3) recommend the Customer upgrade to the current release. The "End-of-Service date" for a given release is either (a) the day before the following release is issued plus 1 year, or (b) the date OJLTD discontinues selling the Software, plus 1 year.

## 7. Support Services.

A. Technical Support Contact. Customer will provide OJLTD with one email address that will be used by Customer for management of all support incidents. The receipt of an email from the aforementioned email address will constitute the opening of one support incident for Customer.

B. Support Incidents. Customers will submit incidents via email to [support@optimajet.com](mailto:support@optimajet.com). Response time for each incident is two (2) business days, if their number does not greater than four (4) in month. If number of incidents is greater than four (4) in month response time is not specified. Response time for support incidents does not include resolution time.

C. Escalation. Customer may indicate desire that an incident will be resolved over the phone or via web conference rather than via email when Customer opens an incidents. OJLTD will escalate the resolution of support incidents at its own discretion.

D. Training. Customer may purchase training as a part of a support package. Training content and cost is determined individually.

E. Upgrade Protection. OJLTD will provide Subscribers with software releases, updates, upgrades, and/or software patches as issued by OJLTD during the term of the Support Agreement as appears on OJLTD's invoice or other receipt of purchase. Subscribers shall be solely responsible for the installation and/or upgrade of the Products. OJLTD reserves the right to charge an additional fee for major releases (new versions that contain major additional functionality and are represented by a change in the initial digits of the version number to the left of the first decimal point) of the Products. Any such software release, update, upgrade, patch or new version will be considered a part of the Product to which it relates and subject to the terms of the license agreement with OJLTD under which such Product was provided to Subscriber.

## **8. Exclusions.**

Support does not include: (1) providing access to new products, programs, modules or features that OJLTD advertises or licenses separately from any Product; (2) support or fixes for errors that result from the unauthorized or improper use of any Product or that result from the failure to implement any relevant improvements or modifications made available by OJLTD; (3) support or fixes for errors that do not materially affect the operation of a Product; (4) providing custom enhancements, features or modifications; (5) providing assistance for any Subscriber's applications or other third-party applications; (6) providing direct assistance to Subscriber or any Subscriber end user; (7) on-site support; or (8) any hardware or related equipment.

## **9. Subscriber's Responsibilities.**

Subscriber is responsible for:

- A. providing and maintaining all hardware, operating systems, and third-party software required to operate each Product in compliance with minimum requirements for that Product;
- B. providing and maintaining phone lines, internet access, and any other such infrastructure required to communicate with OJLTD;
- C. making reasonable efforts to solve problems related to any Product before contacting OJLTD;
- D. providing OJLTD with all information, documentation and assistance as OJLTD might reasonably require in order to perform the Support Services, including, without limitation, providing OJLTD with the setup information, application knowledge, listing of any output, detailed steps required so that OJLTD can replicate the problem, exact wording of error messages and any other data that OJLTD reasonably may request in order to reproduce operating conditions similar to those present when the error occurred;
- E. acting as the sole point-of-contact for Subscriber's users and customers; and
- F. possessing a valid license to each Product for which Support is sought.

## **10. Confidential Information.**

Both parties recognize and acknowledge that all information and documents disclosed by either side during the course of its performance of its obligations under this Support Agreement, constitute a valuable asset of and are proprietary to the disclosing party.

Therefore, each party shall keep confidential, not disclose or otherwise make available to any third party, and not use for purposes beyond the scope of this Support Agreement, any confidential information, advice or material of any nature that is provided or made available by the other party, including but not limited to, any written reports or other data, without the prior written consent of the other party. This section shall not apply to any information that: (1) is in or comes into the public domain through no breach by the recipient of the information of its obligations under this Support Agreement; (2) the recipient acquires from a third party who owes no obligations of confidence to the other party to this Support Agreement in respect thereof; or (3) was already known to the recipient at the time it received such information from the other party to this Support Agreement as shown by the recipient's prior written records. If either party is requested or required by any legal or investigative

process to disclose any information that it is not permitted to disclose, that party shall provide the other with prompt notice of each such request and the information requested so that the other party may seek to prevent disclosure or the entry of protective order. If disclosure is required and a protective order is not obtained, the party from whom disclosure is required shall disclose only such information that it is advised by its counsel is legally required to be disclosed.

### **11. Limited Warranty:**

OJLTD WARRANTS THAT THE SUPPORT AND MAINTENANCE WILL BE PERFORMED IN A WORKMANLIKE MANNER IN ACCORDANCE WITH INDUSTRY STANDARDS. OJLTD MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS SUPPORT AND MAINTENANCE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT, OR ANY OTHER WARRANTY OF ANY KIND RESPECTING ANY MAINTENANCE PERFORMED HEREUNDER.

### **12. Limited Liability:**

THE TOTAL CUMULATIVE LIABILITY OF OJLTD TO EACH SUBSCRIBER FOR ANY AND ALL LIABILITY ARISING UNDER OR RELATED TO THIS SUPPORT AND MAINTENANCE AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID

TO OJLTD BY SUCH SUBSCRIBER UNDER THIS AGREEMENT WITHIN ONE YEAR PRECEDING SUCH LIABILITY. IN NO EVENT SHALL OJLTD BE LIABLE TO ANY SUBSCRIBER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RELATING TO LOSS OF DATA OR LOST PROFITS, EVEN IF OJLTD HAS BEEN ADVISED BY THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. THE FORGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

### **13. General Provisions:**

This Support Agreement will be governed by the laws of the Russian Federation, without regard to or application of conflicts of law rules or principles. The District and Magistrate Courts located in Moscow, shall have sole jurisdiction over any disputes arising hereunder and the parties hereby submit to the personal jurisdiction of such courts. If any provision of this Support Agreement is held to be unenforceable, that provision will be removed and the remaining provisions will remain in full force. If any proceeding or lawsuit is brought by OJLTD or a Subscriber in connection with this Support Agreement, the prevailing party in such proceeding or lawsuit shall be entitled to receive its costs, expert witness fees and reasonable attorney's fees, including costs and fees on appeal. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. Neither this Support Agreement nor any rights or obligations of a Subscriber hereunder may be assigned by the Subscriber in whole or in part without the prior written approval of OJLTD, provided, however, that in the event of a merger or consolidation of the Subscriber, or if any entity purchases or otherwise acquires all, or substantially all, of the assets of that segment of the Subscriber's business relating to the subject matter of this Support Agreement, Subscriber shall be able to assign this Support Agreement as a whole to the surviving corporation or purchasing or acquiring entity, provided that such surviving or acquiring entity

first agrees in writing to be bound by the terms and conditions of this Support Agreement. OJLTD may assign this Support Agreement, and any rights or obligations of Subscriber hereunder, without the consent of Subscriber. Any assignment in derogation of the foregoing shall be null and void. This Support Agreement is the complete and exclusive statement of the agreement between OJLTD and each Subscriber regarding the subject matter of this Support Agreement and supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this Support Agreement. This Support Agreement shall inure only to the benefit of OJLTD, Subscriber, and their valid successors and assigns. This Support Agreement shall not be modified except by a subsequently dated written amendment or exhibit signed by both parties or by their duly authorized representatives.