# Rocket Software Former OpenText Products Software Support Terms and Conditions

## (EMEA - note regional exceptions)

Access and use of Software Support services are provided by Rocket Software, Inc. ("**Rocket Software**") in accordance with these Software Support Terms and Conditions ("**Support Agreement**") and the then current Software Maintenance Program Handbook ("**SMPH**") https://www.rocketsoftware.com/company/trust/agreements. Licensee agrees that by purchasing Support Services, the terms of this Support Agreement govern. If there is any inconsistency between the provisions of this Support Agreement and any applicable Software Maintenance schedule, quotation or Renewal Notice ("**Schedule**"), the Schedule will prevail to the extent of the inconsistency. Capitalized terms referenced herein but not defined herein shall have the meaning ascribed in the Software Maintenance Program Handbook.

1. **Definitions**. The following terms shall have the following meaning:

   "**Covered Software**" shall mean the licensed software for which maintenance services shall be provided including all documentation provided or made available;

   "**Maintenance Fees**" shall mean the fees and other amounts due to Rocket Software for Support Services;

   "**Support Services**" means the software maintenance and support services described in the then current version of the SMPH.

   "**Support Services Term**" means each twelve (12) month period beginning on the date the Covered Software is delivered by Rocket Software to Licensee (which may be accomplished by making the Covered Software available by electronic download) or the anniversary thereof.

2. **Support Services**. Support Services will be provided by Rocket Software subject to Licensee's compliance with its obligations under this Support Agreement and the applicable agreement under which Licensee licenses the Covered Software ("**License Agreement**").

3. **Support Services Exclusions**. Rocket Software shall have no responsibility to provide Support Services to Licensee with respect to any problem with the Covered Software caused by: (a) any software, device, or other product not supplied by Rocket Software; (b) neglect, misuse, alteration, modification, and/ or enhancement to the Covered Software by any party other than Rocket Software; (c) failure of Licensee to provide a suitable installation or operating environment for the Covered Software; (d) use of the Covered Software for a purpose other than the purpose for which it was designed; (e) use of the Software on a computer platform other than the platform authorized by Rocket Software (which may be specified in the Documentation accompanying the Covered Software); or (f) failure of Licensee to install any support software provided by Rocket Software.

4. **Determination of Support Services Term**. The initial Support Services Term shall commence on the date the Covered Software is provided by Rocket Software to Licensee. Renewal of the Support Services is automatic, unless either party provides notice ninety (90) days prior to the anniversary date. If Licensee cancels Support Services and then wishes to reinstate Support Services, Rocket Software may charge Licensee a reinstatement fee in addition to the Maintenance Fees.

5. **Payment of Maintenance Fees**. All amounts due are due and payable upon delivery of the applicable invoice to Licensee. Rocket Software shall be entitled to charge interest on all amounts overdue by more than thirty (30) days at the rate of one and one-half percent (1.5%) per month. Licensee will be obligated to pay the applicable entire annual Maintenance Fee with respect to the Covered Software licensed from Rocket Software, failing which Rocket Software may suspend some or all of the Support Services until payment has been received.

6. **Warranty**. Rocket Software warrants that the Support Services will be performed using reasonable skill and care consistent with generally accepted computer software industry practices. OTHER THAN THE EXPRESS SERVICES WARRANTY SET OUT ABOVE, ROCKET SOFTWARE DISCLAIMS ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES AND CONDITIONS, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO WARRANTIES AND CONDITIONS RELATED TO COMPATIBILITY WITH SOFTWARE OR HARDWARE, NON- EXISTENCE OF ERRORS, NON-EXISTENCE OF VIRUSES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. **Limitation of Liability**. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT, SHALL ROCKET SOFTWARE BE LIABLE TO LICENSEE, OR ANY OTHER PARTY FOR ANY LOSS OF PROFITS, LOSS OF REVENUES, LOST INCOME, OR REPLACEMENT COSTS, NOR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, HOWSOEVER ARISING, WHETHER RELATED TO THE COVERED SOFTWARE OR SUPPORT SERVICES, EVEN IF ROCKET SOFTWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ROCKET SOFTWARE'S TOTAL LIABILITY DURING ANY SUPPORT SERVICES TERM, WHETHER ARISING IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHERWISE SHALL NOT EXCEED THE TOTAL AMOUNT OF MAINTENANCE FEES PAID BY LICENSEE TO ROCKET SOFTWARE DURING THE CURRENT SUPPORT SERVICES TERM. NOTHING IN THIS SUPPORT AGREEMENT SHALL LIMIT OR EXCLUDE ANY LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

8. **Covered Software**. All Covered Software provided to Licensee under this Support Agreement is licensed to Licensee on a non-exclusive, non-assignable, and non-transferable basis in accordance with the provisions of the License Agreement.

9. **Term and Termination**. The Support Agreement shall begin on the date of execution and shall continue until terminated in accordance with the provisions of this Support Agreement. If Licensee fails fully to remedy a material breach within thirty (30) days of notice by Rocket Software, including failure to pay an invoice, Rocket Software may terminate this Support Agreement upon the provision of written notice to Licensee. Rocket Software may immediately terminate this Support Agreement in the event that the License Agreement is terminated. Either party may terminate this Support Agreement if the other party: (a) becomes insolvent; and (b) has a receiver or receiver manager appointed with respect to it or any of its assets. The provisions contained in Sections 5, 7, 9, 10, 11 and 12 of this Support Agreement shall survive any termination.

10. **Confidentiality**. Information exchanged under this Support Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Support Agreement and may only be shared with employees, agents, or contractors with a need to know such information.

Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure during the period the information remains confidential or a trade secret. These obligations do not cover information that (a) was known or becomes known to the receiving party without obligation of confidentiality; (b) is independently developed by the receiving party or (c) is required to be disclosed by law or a governmental agency.

11. **Privacy**. The nature of the Support Services may require Rocket Software to disclose personal information received from Licensee and/or its customers to Rocket Software's related affiliates in other countries with whom Rocket Software has entered into a processing agreement incorporating the standard model contractual clauses for data transfers approved by the European Commission or which are in countries which are recognized by the European Commission as providing an adequate level of protection in relation to the data that is transferred (including Rocket Software affiliates in Canada, United States of America, The Philippines, India and other overseas locations where Rocket Software is able to maintain strict control of the handling of that personal information), and Licensee hereby consents to such disclosure and warrants that: (i) it has all necessary rights, licenses, authorizations and consents required for the use and disclosure of the personal information by Rocket Software in accordance with this Support Agreement; (ii) all use of the personal information by or on Licensee's behalf is compliant with applicable laws and in accordance with the terms of this Support Agreement; and (iii) Rocket Software and any of its personnel will not be in breach of applicable laws as a result of using or disclosing the personal information in accordance with the terms of this Support Agreement. Notwithstanding the above, the transfer or disclosure of personal information shall not affect Rocket Software's obligations at law, in relation to such personal information.

12. **General Provisions.**

   12.1   **Assignment.** Licensee shall not assign, or transfer this Support Agreement or any right or obligation hereunder, including by operation of law or otherwise, without Rocket Software's prior written consent, which consent shall not be unreasonably withheld.

   12.2   **Notices**. Any notice to Licensee under this Support Agreement must be given in writing and is deemed effective when sent either: (a) via certified or registered mail, postage prepaid, or (b) via express mail or nationally recognized courier service to Licensee's address specified in the applicable Order Form. Notices to Rocket Software should be sent to legal@rocketsoftware.com.

   12.3   **Governing Law**. This Support Agreement and each party's performance hereunder shall be governed by the laws of England excluding its conflicts and choice of law rules. The parties submit to the exclusive jurisdiction of the courts of England for any disputes arising out of this Support Agreement. If Licensee or Rocket Software commence any litigation or proceeding against the other related to this Agreement,

the prevailing party shall be entitled to an award of its reasonable attorney's fees and court costs.

12.4    **Limitation of Actions**. No action, regardless of form, arising out of this Support Agreement may be brought more than one (1) year after the cause of action has arisen.

12.5    **Waiver; Severability**. The waiver or failure of a party to exercise in any respect any right provided herein shall not be deemed a waiver of such right. If any provision of this Support Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, such provision shall be deemed severed from this Support Agreement but all remaining provisions shall continue in full force and effect.

12.6    **Headings**. The headings contained in this Support Agreement are intended for convenience or reference only and shall not control or affect the meaning or construction of any provisions of this Support Agreement.

12.7    **Entire Agreement**. This Support Agreement and the corresponding Software Maintenance Program Handbook is the complete and exclusive statement of the agreement between Rocket Software and Licensee. This Support Agreement may not be amended, except by written  agreement.