Support and Maintenance Terms and Conditions

NiCE Technical Support and Maintenance Terms and Conditions ("SMTC")

NiCE IT Management Solutions GmbH, located in Germany, or NiCE IT Management Solutions Corporation, located in the U.S., as applicable (**"NiCE"**), will provide Technical Support and Subscription Services (**"Services"**) as specified in these Terms and Conditions (**"SMTC"**) to the customer identified in an Order (**"Customer"**), pursuant to this SMTC and the Data Processing Addendum (which is incorporated into this SMTC by this reference), and as set forth at the NiCE Support Services Website, http://www.nice.de/legal.

The NiCE entity, effective date, Software, and Services level will be as set forth on the applicable enterprise license agreement, SMTC order form, Customer's purchase order, (each, an **"Order"**). Any terms used but not defined in this SMTC have the meanings set forth in the NiCE End User License Agreement (**"EULA"**).

1. DEFINITIONS

For purposes of this SMTC, the following definitions apply:

1.1 "Content"

means data provided by Customer to NiCE to address a Technical Support issue. Content does not include customer account or relationship data that NiCE uses in connection with a Technical Support request, or data collected by NiCE to verify the support entitlement or to facilitate any communications.

1.2 "Data Processing Addendum"

means the then-current version of the NiCE Data Processing Addendum located at https://www.nice.de/legal

1.3 "Error"

means a failure in the Software to materially conform to the specifications described in the applicable product documentation ("**Documentation**").

1.4 "Modified Code"

means any modification, addition and/or development of code scripts deviating from the predefined product code tree(s)/modules developed by NiCE for production deployment or use. Modified Code excludes customizable Software options for which NiCE offers Services.

1.5 "Services Fees"

means the fees for Services specified in a NiCE or reseller invoice.

1.6 "Services Period"

means the period for which Customer has purchased the Services and any subsequent renewal periods, and commences: (a) for Software Licenses for which Services are mandatory, on the date the applicable Software License Key(s) are made available, and (b) for Software Licenses for which Services are optional, on the date of purchase of the Services.

1.7 "Software"

means software on the NiCE price list, and all components shipped with the Software, including Open Source Software components.

1.8 "Subscription Services"

means any Minor Releases, and Major Releases to the Software and related Documentation that NiCE provides to Customer.

(a) "**Minor Release**" means a generally available release of the Software that:

    (i)   introduces a limited number of new features, functionality, and minor enhancements;

    (ii)   fixes for high severity and high priority bugs identified in the current release; and

    (iii)   is designated by a change in the digit to the right of the decimal point (e.g., Software 4.0 => Software 4.1).

(b) "**Major Release**" also known as an "**Upgrade**" means a generally available release of the Software that:

    (i)   contains functional enhancements and extensions;

    (ii)   fixes for high severity and high priority bugs; and

    (iii)   is designated by NiCE by a change in the digit to the left of the first decimal point (e.g., Software 4.0 => Software 5.0).

1.9 "Technical Support"

means email-based or web-based technical assistance by NiCE to Customer's technical contact(s) regarding installation of the Software, Errors, and technical product problems, at the corresponding Services level purchased by Customer.

1.10 "Third Party Products"

means any software or hardware that is manufactured by a party other than NiCE and is either

(a) not delivered with the Software, or

(b) not incorporated into the Software.

2. SERVICE TERMS

2.1 Provision of Services

NiCE will provide Services to Customer during the Services Period at the Services level purchased.

Preamble

This section applies to customers having purchased support of the software. The services listed are provided if the support fees have been paid for the time when the service is requested.

Software Update Delivery

NiCE will keep the software and documentation, which are the subject of this contract, up to date and make the latest releases available for Customer via the NiCE customer portal. These updates contain partially or completely new versions of the software, including the solutions for problems NiCE is aware of. Customer is responsible for installing these software updates.

Patch Delivery

Customer, under the terms of this agreement, is authorized to obtain free patches via the NiCE customer portal. Customer will be notified in writing or via e-Mail as soon as any new patches are available.

Support Calls

Customer may launch support calls via e-Mail, or via the internet at the NiCE customer portal. Support call entries are monitored around the clock and answered as fast as possible, typically within two hours, but no later than 24 hours after the call has been registered. 9x5 support covers support calls Monday through Friday during regular business hours, except for public German or U.S. holidays.

NiCE will decide, depending on the urgency of the call, if response is given via e-Mail, fax, phone or web-based conference in an effort to provide best possible assistance to Customer.

Support calls may be launched on the following:

(a) Installation problems of the software

(b) Configuration problems of the software

(c) Suspected malfunctioning of the software

In all cases, Customer has to provide sufficient information along with the call or upon request (log files, trace file where possible, system description, database version, database configuration etc., depending on the context).

Additional services covering some of the exclusions may be purchased in addition.

2.2 End of Availability

NiCE may, at its discretion, decide to retire any Software and/or Services offering from time to time ("**End of Availability**"). NiCE will notify affected customers, and will post information regarding End of Availability and the timeline for discontinuing the affected Services. NiCE has no obligation to provide Services for any Software after the End of Availability date published in the life cycle policy for that Software.

2.3 Purchase Requirements

(a) Except as otherwise provided, Customer must purchase Services for the initial Services Period for the most current, generally available version of the Software.

(b) Customer must purchase and/or renew Services at the same Services level for all licenses for a particular Software product installed in a given environment, such as Test, Development, QA, or Production (e.g., a customer cannot purchase 24x7 support for only one license in its lab and purchase 9x5 support for the other licenses in that environment).

(c) Except as otherwise provided in the applicable price list, the minimum term for any Services offering is one (1) year.

(d) Upon renewal of Services, this SMTC will automatically update to the then-current Services terms and conditions set forth at https://www.nice.de/legal.

2.4 Exclusions

(a) Services do not include any of the following:

   (i)   User education and training;

   (ii)   Implementation or installation assistance at Customer's site;

   (iii)   Development, coding and consulting of additional software;

   (iv)   Recovery of lost data, regardless for what caused the data loss;

   (v)   Additional services covering some of the exclusions may be purchased in addition.

(b) Services do not cover problems caused by the following:

    (i)   unusual external physical factors such as inclement weather conditions that cause electrical or electromagnetic stress, or a failure of electric power, air conditioning or humidity control; neglect; misuse; operation of the Software with other media not in accordance with manufacturer's specifications; or causes other than ordinary use;

    (ii)   use of the Software that deviates from any operating procedures as specified in the Documentation;

    (iii)   Third Party Products, other than the interface of the Software with the Third Party Products;

    (iv)   Modified Code;

    (v)   any customized deliverables created by NiCE, NiCE partners, or third party service providers;

    (vi)   use of the Software with unsupported tools (e.g., Java Development Kit (JDK); Java Runtime Environment (JRE)), APIs, interfaces or data formats other than those included with the Software and supported as set forth in the Documentation. Customer may request assistance from NiCE for such problems, for an additional fee.

(c) If NiCE suspects that a reported problem may be related to Modified Code, NiCE, may, in its sole discretion,

    (vi)   request that the Modified Code be removed, and/or

    (vii)   inform Customer that additional assistance may be obtained by Customer from various product discussion forums or by engaging NiCE's consulting services group for an additional fee.

(d) Service Interruptions:

Customer understands and agrees that temporary interruptions of services provided by the Licensor may occur from time to time as normal events. The Licensor agrees to exercise reasonable care to prevent such occurrences. However, under no circumstances will the Licensor be held liable for any financial or other damages due to such interruptions.

2.5 Customer Responsibilities

NiCE's obligation to provide the Services is subject to the following:

(a) Customer agrees to receive communications from NiCE via email, telephone, and other formats, regarding Services (such as communications concerning support coverage, Errors or other technical issues, availability of new releases of the Software, and training options).

(b) Customer's technical contact must cooperate with NiCE to enable NiCE to deliver the Services.

(c) As between NiCE and Customer, Customer is solely responsible for use of the Software by its personnel, and must properly train its personnel in the use of the Software.

(d) Customer must promptly report to NiCE all problems with the Software, and must implement all corrective procedures provided by NiCE reasonably promptly after receipt of the corrective procedures.

(e) Before contacting NiCE for Technical Support, Customer must protect and back up the data and information stored on the systems on which the Software is used, and must confirm that the data and information is protected and backed up in accordance with any applicable Customer or regulatory requirements. NiCE is not responsible for lost data or information in the event of Errors or other malfunction of the Software or the systems on which the Software is used.

(f) Named Users:

(i) Customer names up to three engineers that are entitled to submit support calls. Customer makes sure that these persons are knowledgeable and competent in the matters involved in the support call (operating systems, databases, etc). The named users can be submitted via the Named Users Addendum.

(ii) These users must be registered at the NiCE Customer Portal.

(iii) Named users may be replaced at any time by sending a proper notice (in writing or via e-Mail) to NiCE and registering the new user at the NiCE Customer Portal.

3. SERVICE OFFERINGS AND SERVICE FEES

3.1 Services Fees

(a) Services Fees are payable on the effective date specified in the applicable Invoice or, in the case of a renewal Services Period, no later than the date of commencement of the renewal term. Services Fees are specified in the applicable price list and are non-refundable.

(b) If Customer renews or adds a Services offering that has a minimum term of one (1) year, Customer may elect to make Services for all of its Software Licenses coterminous with the renewed or added Services. In that case, NiCE will prorate the applicable Services Fees to extend the current Services Period to make it coterminous with the renewed or added Services.

(c) For Software that is licensed on a perpetual basis, if Customer purchases Services after acquiring the Licenses, or had elected not to renew Services and later wishes to re-enroll in the Services, Customer must move to the then-current Major Release of the Software and must pay:

(i) the applicable Services Fees for the current Services Period;

(ii) the amount of Services Fees that would have been paid for the period of time that Customer was not enrolled in the Services.

4. PAYMENT, WARRANTY, LIMITATION OF LIABILITY, AND TERMINATION

4.1 Payment Terms

NiCE will invoice Customer or Customer's reseller for Services Fees promptly following Customer's purchase. Payment is due within thirty (30) days of the date of the invoice. Services Fees are exclusive of any taxes, duties, or similar charges imposed by any government. Customer must pay or reimburse NiCE for all federal, state, dominion, provincial, or local sales, use, personal property, excise, value added, withholding or other taxes, fees, or duties relating to the transactions contemplated by this SMTC (other than taxes on the net income of NiCE). Amounts not paid on time are subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount allowed by applicable law. If payment of any Services Fee is delinquent, NiCE may also suspend performance of all Services until such delinquency is corrected.

4.2 Limited Warranty

NiCE warrants that the Services will be performed in a workmanlike manner and will conform to industry standards. Upon Customer providing NiCE with a reasonably detailed written notice of the alleged nonconformance, NiCE will use reasonable efforts to re-perform the Services. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY IS GIVEN EXPRESSLY AND IN PLACE OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF SERVICES.

4.3 Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NICE WILL NOT BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, ARISING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS SMTC. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO CUSTOMER. NICE'S LIABILITY UNDER THIS SMTC WILL NOT, IN ANY EVENT, EXCEED THE SERVICES FEES PAID BY CUSTOMER TO NICE FOR SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT MOST DIRECTLY GIVING RISE TO THE CLAIM.

4.4 Termination of Services

NiCE may terminate all Services at any time if

(a) Customer is in breach of its License restrictions or

(b) Customer is in material breach of this SMTC.

5. CUSTOMER SUPPORT DATA

5.1 Submission of Content

In connection with a Technical Support request, Customer may upload Content to NiCE's systems. That Content will vary depending on the product and the context of the Technical Support issue. Details on the required information, such as system information about the failure, including software versions, logs, and similar, can be obtained at the relevant NiCE portal solution help desk.

Customer is solely responsible for taking steps necessary to protect any sensitive or confidential information, or Personal Data, included in Content. Those steps may include Customer obfuscating or removing such information or, depending on the product, otherwise working with NiCE at the time of submission to limit the disclosure of such information.

5.2 Restricted Content

Customer must not submit any Content to NiCE that:

(a) Customer does not have the right to provide to NiCE;

(b) is regulated by law or regulation without complying with the applicable laws or regulations.

If Customer submits any Content in contravention of this Section 5.2, then Customer is solely responsible for the consequences of that submission.

5.3 Personal Data

To the extent Customer provides Personal Data (as defined in the Data Processing Addendum) to NiCE as part of the Content, NiCE will process the Personal Data in accordance with the Data Processing Addendum.

5.4 Use of Content

NiCE may review and analyze Content to address a Technical Support request. NiCE may use the results of that review and analysis, in combination with

(a) data NiCE collects from Customer regarding Customer's use of the Software (such as configuration, performance, and usage data) and

(b) information NiCE maintains about the Customer's account, to provide support to NiCE customers, and to improve NiCE products, services, and user experiences.

5.5 Disclosure of Content

If NiCE is required by a subpoena, court order, agency action, or any other legal or regulatory requirement, to disclose any Content, NiCE will provide Customer with notice and a copy of the demand, as soon as practicable, unless NiCE is prohibited from doing so pursuant to applicable law or regulation. If Customer requests, NiCE will, at Customer's expense, take reasonable steps to contest and to limit the scope of any required disclosure.

6. MISCELLANEOUS

6.1 Transfer, Assignment

Customer may not assign or delegate this SMTC to any third party without NiCE's prior written consent.

6.2 Governing Law

This SMTC are governed by the laws of Germany without regard to conflict of laws principles. Customer and NiCE consent to the exclusive jurisdiction of the courts located in Stuttgart, Germany for the adjudication of any disputes under this SMTC.

6.3 Entire Agreement

This SMTC, the Data Processing Addendum, the applicable Order, the EULA to the extent it applies, and the information on the NiCE Support Services Website (https://www.nice.de/legal/), together constitute the entire agreement of the parties with respect to provision of the Services by NiCE to Customer, and supersedes all prior written or oral communications, understandings, and agreements.

6.4 Customer Forms

Except as expressly set forth in this SMTC, no terms of any purchase order or other business form that Customer may use will affect the obligations of the parties under this SMTC, and any purchase order or other business form which contains additional or conflicting terms is hereby rejected by NiCE. Customer agrees that purchase orders do not have to be signed by Customer to be valid and enforceable.

6.5 Amendment and Waiver

Any amendment or waiver of the provisions of this SMTC must be in writing signed by both parties to be effective.

6.6 Severability

If any provision of this SMTC is found to be invalid or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law.

6.7 Survival

Any provision of this SMTC that, by its nature and context is intended to survive, including provisions relation to payment of outstanding fees, confidentiality, warranties, and limitation of liability, will

survive termination of this SMTC. The Data Processing Addendum will continue to be effective to the extent NiCE continues to process Personal Data after termination of this SMTC.

6.8 Use of Third Parties

NiCE may deliver the Services with the assistance of Third Parties, such as the manufacturers of hardware or software, on which NiCE software relies (i.e. Microsoft, IBM, Oracle, VMware). NiCE may use Customer data to open support calls with these Third Parties, solely for the purpose of solving issues, that may derive from any malfunctioning in the Third Party hardware or software. NiCE will in any case inform the Customer upfront when opening support calls with Third Parties, and will work closely with the Customer during such scenarios.