

**XCEL SOFTWARE, INC.
SOFTWARE SUPPORT POLICY**

The following policy terms and conditions apply to all generally-available Xcel Software, Inc. ("XCEL") software products, and to other XCEL software products at XCEL's discretion. XCEL reserves the right to modify these terms and conditions in its sole discretion.

INTRODUCTION

XCEL and User are parties to a certain Software License Agreement (the "License Agreement") under which User was granted a license to use the computer software described therein.

PREPAID ANNUAL SOFTWARE MAINTENANCE PLAN

Software Updates

The Prepaid Annual Software Maintenance Plan provides price protection and software updates. Purchase of the Prepaid Annual Software Maintenance Plan is a requirement with the initial order. Please see the attached XCEL Price Schedule for current Maintenance Plan rates. The Maintenance Plan includes:

Source Protection

The software is securely managed and maintained within Xcel Software's infrastructure, enabling instant access from XCEL's technical staff for fast, efficient software support.

Price Protection

To assist Users in budgeting for future maintenance and support plans, base system price is 'locked in' at the list price at the time of purchase. The protected base system price will then increase with any additional license purchases and/or custom software development.

Software Updates

One copy of any new releases issued without additional charge to XCEL's customers generally, including Error Corrections, Support Releases and, in certain instances in XCEL's sole discretion, New Releases, and provide any assistance reasonably necessary for User to install and operate each such release.

SOFTWARE SUPPORT PLANS

NOTE: XCEL's Software Support Plans are available only with the purchase of a Prepaid Annual Software Maintenance Plan.

XCEL offers the following four software support plans. Please see XCEL's current price schedule for applicable support plan rates.

1. Prepaid Annual Unlimited Telephone/Email Support Plan

Provides unlimited telephone/email technical support, with a four-hour response time and a toll-free phone number.

2. Per-Incident Plus Support Plan

Telephone/email technical support is available on a per-incident time-limited basis, with an eight-hour response time.

3. Five-Pack Incident Plus Support Plan

Telephone/email technical support is also available in convenient five-pack per-incident time-limited basis, with an eight-hour response time.

4. Time-Based Support Plan

Provides unlimited telephone/email technical support based on actual time to process, research, support and document activity, rounded up to the nearest 15 minutes, with a four-hour response time.

ADDITIONAL SERVICES

Other services, including software development, software consulting services, project management, and software training services may be available at XCEL's sole discretion and on such terms as XCEL shall stipulate.

TERMS COMMON TO ALL SOFTWARE SUPPORT PLANS

The following terms apply to all software support plans:

1 DEFINITIONS

1.1 "Documentation" means any system documentation and user manuals currently and customarily provided by XCEL to customers of Products.

1.2 "Error" means incorrect code in Software or an incorrect statement or diagram in Documentation, resulting in interruption or irregularities in performance or other malfunction of Software. A problem resulting from User's misuse or improper use of the Product(s) or combining or merging the Product(s) with any hardware or software not authorized to be so combined or merged by XCEL, shall not be considered an Error.

1.3 "Error Correction" means a modification to the Software that causes the Software to conform to the Specifications, or a procedure or routine that when observed in the operation of the Software eliminates the practical effect of an Error.

1.4 "New Release" means a new release of Product(s) which adds new functionality or performance and for which XCEL typically charges its customers.

1.5 "Normal Working Hours" means the hours between 8:00 a.m. and 6:00 p.m., Monday through Friday, excluding official public holidays of XCEL.

1.6 "Product(s)" means the Software, the Documentation and (where the context so admits) any copies of either.

1.7 "Software" means the software licensed to User pursuant to the License Agreement as that term is defined in such License Agreement.

1.8 "Specifications" means XCEL's applicable published functional description of Software.

1.9 "Support Release" means a modification or revision to Products operating in User's computing environment that is provided by XCEL without charge to its customers that are receiving Support.

1.10 "Support Representatives" means User's two (2) employees so designated by User.

1.11 "Support Term" for the **Prepaid Annual Unlimited Telephone/Email Support Plan** means an initial period commencing on the date XCEL accepts payment for such plan and ending on the last day of the eleventh (11th) full calendar month thereafter, and subsequent annual periods commencing on the first day following the end of the preceding period. For all other support plans, Support Term is month to month.

1.12 "Support Services" means the support services described in Section 2.1 below.

2 SUPPORT SERVICES

2.1 XCEL's Support Services. Depending upon which of the support plans has been selected by User, XCEL shall render the following services during Normal Working Hours:

- (a) Maintain a Product support center to receive, by telephone or network transmission, operator reports of Errors.
- (b) Maintain a telephone number for User to report Errors and receive assistance in operation of the Product(s), and an Internet website to provide an electronic link between XCEL and User.
- (c) Maintain a trained staff capable of rendering the services set forth herein.

(d) Within the support-plan applicable number of hours of receiving a report (in accordance with XCEL's standard reporting procedures) of a verifiable and reproducible Error and verifying that such an Error is present, (i) initiate work to develop an Error Correction, (ii) use all reasonable diligence to complete development of such Error Correction, (iii) upon completion, provide User at least a "temporary fix" consisting of sufficient programming and operating instructions to enable User to implement the Error Correction, and (iv) include the Error Correction in all subsequent releases of the Product(s). XCEL shall not be responsible for correcting Errors in any version of the Product(s) other than the most recent release of the Product(s), provided that XCEL shall continue to support superseded prior releases for a period reasonably sufficient to allow User to implement the newest release, not to exceed 90 days.

(e) Provide User with one copy of any new releases issued without additional charge to its customers generally, including Error Corrections, Support Releases and, in certain instances in XCEL's sole discretion, New Releases, and provide any assistance reasonably necessary for User to install and operate each such release.

2.2 New License Agreement. As a condition to its obligation to provide User New Releases of the Product(s) pursuant to Sections 2.1(e) above, XCEL may require User to enter into XCEL's then-current standard form of software license agreement.

2.3 User's Support Obligations. During the Support Term, User shall:

- (a) At all times maintain two (2) appropriately qualified persons as its Support Representatives and keep XCEL informed of their identities.
- (b) Ensure that its Support Representatives receive and maintain such training in the implementation and operation of the Product(s) as shall be reasonably necessary to enable the efficient delivery by XCEL of the foregoing Support Services.
- (c) Handle all communications with XCEL regarding Support Services through the Support Representatives.
- (d) Procure, install and maintain all equipment, telephone lines, communications interfaces and other hardware (other than the support control center at XCEL's facilities) necessary to operate the Software and to receive the Support Services.

3 FEES, OTHER CHARGES AND PAYMENT

3.1 Support Fees. User shall pay XCEL Support Fees in accordance with XCEL's then-current price schedule. XCEL reserves the right to change its Support Fees from time to time by written notice to User, provided that no such change will be effective until the beginning of the following annual Support Term (if any) or sixty (60) days after such notice, whichever is later.

3.2 Taxes. Support Fees do not include sales, use, value added or other excise tax. User shall pay or (if paid by XCEL) reimburse XCEL for all such taxes based on this Support Policy or services provided hereunder (but not any taxes based upon XCEL's gross revenues or net income), together with any interest on such taxes if not due to XCEL's delay.

3.3 Other Charges. User assumes and agrees to pay all export and import duties, fees and other similar charges, but not expenses related to exporting from the United States. User shall be responsible for all travel and living expenses, shipping and delivery charges, telephone line use and similar expenses necessary for the delivery of Support Services hereunder; provided however that any travel or living expenses shall be approved in advance by User and shall be in accordance with User's travel expense policies applicable to its own employees.

3.4 Invoices and Payment. If notice of termination has not been given, XCEL shall invoice User for the annual Support Fee not more than sixty (60) days prior to the beginning of the Support Term. XCEL shall invoice User weekly or monthly (at XCEL's option) for all other fees and charges accrued, and all reimbursable expenses incurred, during the previous week or month. All invoiced amounts shall be due and payable immediately after receipt of invoice. Amounts not paid when due shall be subject to interest at one and one half percent (1-1/2%) per month or, if less, the maximum rate of interest allowed by law, computed from the invoice date.

4 DISCLAIMER OF WARRANTY

EXCEPT AS EXPRESSLY STATED IN THIS SECTION, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, RELATING TO PRODUCTS OR SERVICES FURNISHED TO USER HEREUNDER. XCEL SPECIFICALLY DISCLAIMS AND EXCLUDES ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THAT OF FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, WHETHER MADE BY XCEL EMPLOYEES OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS SUPPORT POLICY SHALL BE DEEMED TO BE A WARRANTY BY XCEL FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF XCEL WHATSOEVER.

5 LIMITATION OF LIABILITY

Except with respect to claims of infringement of United States patents, copyrights or trade secrets (to the extent otherwise specifically provided herein), and regardless of the form of action (whether in contract, tort, breach of warranty or otherwise), IN NO EVENT (i) SHALL XCEL'S MAXIMUM LIABILITY FOR ALL DAMAGES EXCEED ACTUAL DIRECT DAMAGES CAUSED BY THE SPECIFIC PRODUCT OR SERVICE COMPLAINED OF, (ii) SHALL XCEL'S MAXIMUM LIABILITY FOR ALL DAMAGES EXCEED THE TOTAL AMOUNT OF FEES PAID HEREUNDER FOR THE SPECIFIC PRODUCT OR SERVICE WHICH DIRECTLY CAUSED SUCH DAMAGE, AND (iii) SHALL XCEL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES (INCLUDING BUT NOT LIMITED TO LOST BUSINESS PROFITS AND LOSS, DAMAGE OR DESTRUCTION OF DATA) EVEN IF XCEL HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME. No limitation as to damages for personal injury is hereby

intended. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages under certain circumstances and the above exclusion or limitation may not apply.

6 TERMINATION

6.1 Renewals. The Support Term will be renewed only upon XCEL's consent.

6.2 Termination of License. XCEL's Support Services and the Support Term shall terminate automatically upon termination of User's license to use the Product(s) under the License Agreement.

6.3 Termination by User. User may terminate XCEL's Support Services by written notice to XCEL, which may be given at any time and shall be effective as of the last day of the Support Term in which it is given. Once terminated by User, Support may be resumed with XCEL's approval by User's payment of the then-current annual Support Fee plus a resumption charge in accordance with XCEL's then-current resumption policy.

6.4 Termination by XCEL. If User fails to pay when due any amount payable hereunder or is in material breach of any other obligation under this Support Policy, XCEL may terminate the Support Services and the Support Term by written notice to User, effective thirty (30) days after receipt unless User cures such breach within the 30-day period. XCEL may also terminate Support for superseded releases after a reasonable time.

7 MISCELLANEOUS

7.1 Entire Policy; Modifications. This Support Policy is the complete and exclusive statement of XCEL's and User's obligations with respect to the subject matter hereof and supersedes all other oral or written representations, understandings, proposals or other communications between the parties. This Support Policy may be modified by XCEL from time to time in its sole discretion, except that any changes will not be effective for the current Support Term.

7.2 Governing Law. This Support Policy shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, USA, without regard to its choice of law provisions. In the event of any conflict between foreign laws, rules and regulations and those of the United States, the laws, rules and regulations of the United States shall govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Support Policy. Exclusive jurisdiction and venue for any litigation arising under this Support Policy is in the federal and state courts located in Suffolk County, Massachusetts, USA, and User and XCEL hereby consent to such jurisdiction and venue for this purpose.

7.3 Notice. All notices given under this Support Policy shall be in writing and shall be effective on delivery to the address of the other party set out at the beginning of this Support Policy or to any replacement address of which the party giving notice has been given notice in accordance with this Section.

7.4 Force Majeure. In no event shall either party be liable for any delay or failure to perform under this Support Policy which is due to causes beyond the reasonable control of such party.

7.5 Severability. In the event that any provision of this Support Policy is for any reason void or unenforceable in any respect, such provision shall be without effect to the extent of the voidness or unenforceability without affecting such provision in any other respect and without affecting any other provision.

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