

BPA Support and Maintenance Terms and Conditions

1. Agreement. Subject to your payment of applicable support and maintenance fees, BPA agrees to support, and maintain the BPA software products ("Software") subject to these terms and conditions ("Agreement"). Customer will receive Software Assurance, Premium service as indicated in its order for the support and maintenance services. By accessing BPA support and maintenance services in any way, you agree to be bound by the terms and conditions below.
2. Term. Customer support and maintenance agreements are mandatory the first year and will be provided for the duration of the contract, thereafter, these services will automatically renew for additional one year terms, unless either Customer or BPA provides written notice of termination at least 60 days prior to the end of any such term. Customer support and maintenance services start when software license keys (or Cloud services) are delivered. In the event that Customer accesses BPA support services in any way after this Agreement has expired or been terminated, Customer will continue to be bound by this Agreement, including without limitation Sections 4, 10, and 11, which will continue to apply to the services after such expiration or termination. Each renewal will be at BPA's then-current rate. The total service price will be calculated as a percentage of the current list price of the associated license, appropriate to the level of service purchased. Either party may terminate this Customer support and maintenance agreement upon 30 days' notice in the event of a material breach by the other party, provided such breach is not cured by the end of such 30 day period. If Customer terminates for an uncured breach by BPA, Customer shall receive a refund in the amount of any paid and unused support and maintenance fees. No refund will be issued if BPA terminates for an uncured breach by Customer. If your license to the Software is terminated for any reason, BPA's obligation to provide support and maintenance services terminates at the same time. The termination, cancellation of support and maintenance services does not remove your obligation to pay any amounts due or accrued as of the date of termination, or any other of your obligations to BPA then or thereafter accrued.
3. Scope of Support and Maintenance Services.
 - (a) **Software Assurance ("SA")** services consist of the following:
 1. New Software Releases - including software patches, bug fixes, modifications and updates (collectively, "Software Updates").
 2. Access to the BPA Community site where you can download BPA's software, find technical documentations, FAQ's and access the BPA Support Center (Help Desk). A maximum of 3 registered contacts can access the BPA Community site (usually trained administrators).
 3. Web-based submission of incidents and requests to the BPA support center during the normal business hours:

The BPA Support Center (Help desk) operates from Monday to Friday from 8.00am to 5.00pm CET (business hours). The BPA support center is closed during the Swiss Public Holidays. Limited support services may be given during those days.
 4. Initial response time (Online, Email only): Best effort. BPA will use commercially reasonable efforts to provide a rapid initial response to high-level severity (severe loss of service) incident reports.
 5. One (1) non-production license for each production license purchased / rented (for On-Premise licenses).
 - (b) **Premium Support ("PS")** services consist of all SA services plus:
 1. Priority on incident reports: BPA will use commercially reasonable efforts to provide an initial response to incident reports within 8 hours of our receipt of the report.

2. A permanent hosted site collection to test your configurations with the latest releases.
 3. Outbound technical phone support (when needed) during the BPA Support Center operating hours.
 4. A maximum of 6 registered contacts can access the BPA Community site.
 5. Unlimited non-production licenses.
4. Support and Maintenance Exclusions. Services provided by BPA under this Agreement are limited to the covered Software and are contingent upon the Customer's installation of the most current Software release and updates, and proper use of the Software in the application for which it was designed. BPA will not be obligated to provide any service or to correct any malfunction, damage or other problem if the Software: (a) has been altered, except by BPA or an BPA-designated representative or in accordance with BPA instructions, (b) has not been installed, operated, or maintained in accordance with BPA instructions, or (c) has been subjected to abuse or improper use, hardware malfunction, negligence or accident. BPA Support Services do not include any of the following: (d) information and advice pertaining to the use, design, and configuration of the Software; (e) troubleshooting of Microsoft, third party, or open standards based technologies, such as XML, HTML/CSS, SharePoint, BizTalk, Active Directory, middleware, SQL queries, and database connectivity; custom solutions created by any party other than BPA and any other enhancement or modification that is not provided "out of the box" by BPA; or custom scripting or code. You acknowledge that BPA is not required to correct every bug, error, or problem with the Software you report to BPA or of which BPA otherwise receives notice. If you report an incident not covered by the support and maintenance services set forth herein, BPA may refer you to an authorized channel partner or technology partner in which case, the cost of those services, if any shall be your responsibility.
5. Software Versions Covered. BPA will provide support and maintenance only for the current version and the preceding major version (N-1) of all BPA products. In the absence of a superseding major version, feature updates will cease Three (3) years after the final major version was first released for general availability. All other BPA support services will continue to be available to customers on retired product versions for as long as the customer maintains a support and maintenance agreement.
6. Your Obligations.
- (a) Submitting Incidents. In order to expedite the resolution of any reported incident, to the extent available, you will provide to BPA (i) a full description of the problem, including any actions that initiate the problem state; (ii) the business impact of the problem; the version, edition and build numbers of all software components affected or involved in the affected system (for example, BPA products, Microsoft SharePoint products, Windows Server, including physical or virtual configuration, SQL Server, Internet Explorer); (iii) any applicable log files that help with diagnosis; (iv) any applicable screen capture images that help illustrate the problem
- Incident reports can only be entered by registered contacts in the BPA Community site.
- (b) You agree to give BPA reasonable access to the installed Software as necessary for BPA to determine the cause of the problem and find a resolution. You are solely responsible for your data, information and software, including making back-up copies and security. BPA recommends you create backup copies of configuration files before any work is performed.
- (c) You acknowledge that any failure to timely implement Software Updates may render the Software unusable or non-conforming and you assume all risks arising from your failure to install such Software Updates. Even if you have paid the applicable fees, BPA will not be required to provide support and maintenance services to you if you have not properly implemented all Software Updates provided to you.

7. Prices and Payment. Fees for the initial or any subsequent term of Customer's support and maintenance agreement will be due and payable net 30 days from date of invoice. The first annual fee is due when software license keys (or Cloud services) are delivered. All payments to BPA will be made in your quote's currency. Additional fees will be charged if paying with a credit card or check. BPA may accept payment in any amount without prejudice to its right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment or in any letter accompanying a check or payment or elsewhere will be construed as an accord or satisfaction. Overdue payments may be charged interest at the lesser of 1.5% per month or the maximum interest allowed by law. If BPA is required to retain a collection agency or attorney to collect overdue payment, all reasonable collection costs, including attorney fees, will be payable by Purchaser.
8. Lapsed Service Payment. If a Customer is not under Software Assurance services (like if customer terminated those services) and wishes to subsequently purchase Software Assurance services, Customer will be charged the then-current annual Software Assurance fee, and an additional fee equal to the then-current Software Assurance fee for the time period during which no Software Assurance was in effect, up to a maximum of 2 years. This lapsed service payment applies only to Software Assurance. If Software Assurance services are current and paid in full, Premium Support can be added at any time.
9. Taxes and Other Charges. All charges are exclusive of all foreign, federal, state, municipal, or other government excise, duty, sales, use or occupational taxes or charges now in force or enacted in the future, and therefore are subject to an increase equal in amount to any taxes or charges BPA may be required to collect or pay upon the services performed or materials provided hereunder whether during the service coverage period or otherwise.
10. Limitation of Liability and Disclaimer of Warranty. BPA's sole obligation and liability hereunder is for the service and repair of the Products covered under this Agreement. BPA will have no further obligation or liability beyond such service and repair. IN NO EVENT WILL BPA BE LIABLE FOR ANY DAMAGE RESULTING FROM LOSS OF USE, DATA, PROFIT, OR BUSINESS, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM AN ACTION OF CONTRACT, TORT OR OTHER LEGAL THEORY. BPA'S LIABILITY FOR DAMAGES FOR ANY CAUSE, WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT) WILL BE LIMITED TO THE SERVICE FEE ACTUALLY PAID UNDER THIS AGREEMENT. BPA DISCLAIMS ALL WARRANTIES HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE OR USE.
11. General Provisions.
 - (a) Non-Assignment and Non-Transferability: Customer may not transfer its support and maintenance agreement to a third party without BPA's prior written consent. Support and maintenance agreement entitlement is not transferable between products or customers. A support and maintenance agreement cannot be transferred from one product to provide coverage on another product, unless this transfer is in connection with a RMA replacement. Support and maintenance contracts do not transfer with product title transfers between Customer and any third party without the prior written consent of BPA and payment of a recertification fee.
 - (b) Force Majeure. BPA will exercise reasonable efforts to meet its obligations hereunder, but will not be liable or in default under this Agreement due to the delays in delivering materials or furnishing services resulting from any cause beyond its reasonable control including, but not limited, to acts of God, weather, strikes, labor disputes, transportation difficulties, and/or any other cause whatsoever.

12. General.

This Agreement represents the entire understanding between the parties and supersedes all prior or contemporaneous negotiations, representations and conditions, whether written or oral.

This Agreement shall be governed by Swiss law. The Courts of Yverdon, Switzerland, shall have jurisdiction over any disputes arising under the Agreement.