



MS Technology, Inc. Support and Subscription Services “SnS” Terms and Conditions

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE PURCHASING AND/OR USING MST PRODUCTS OR SERVICES. BY ACQUIRING OR USING MST SERVICES, CUSTOMER SIGNIFIES ITS ASSENT TO AND ACCEPTANCE OF THESE TERMS & CONDITIONS AND ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THESE TERMS & CONDITIONS. AN INDIVIDUAL ACTING ON BEHALF OF A CUSTOMER REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT CUSTOMER. IF CUSTOMER DOES NOT ACCEPT THESE TERMS AND CONDITIONS, THEN IT MUST UNINSTALL ANY MST SOFTWARE AND NOT USE MST SOFTWARE OR SERVICES FOR ANY PURPOSE.

MS Technology, Inc., a North Carolina corporation, or MS Technology Private Limited, an organization formed under the laws of India, as applicable (“MST”), shall provide Technical Support and Subscription Services (as defined herein) (collectively, the “Services”) to the Customer, as per the terms of this Agreement (the “Agreement”) and as stated at the MST Support Services Website. The applicable MST entity, Effective Date, Software, and Services level will be stated on the applicable enterprise license agreement, SnS order form, Customer’s purchase order, or, if Customer has purchased support on a per-incident basis (“Per Incident”), in the registration form completed by Customer upon such purchase (collectively the “Order”).

1. Definitions

“**Error**” means a failure in the Software to materially conform to the specifications described in the documentation of the product (“Documentation”).

“**Modified Code**” means any updates, addition and/or development of code scripts deviating from the predefined product code tree(s)/modules developed by MST for production deployment or use.

“**Service Fees**” means the fees payable by the Customer for MST Products and Services as specified in the corresponding MST invoice.

“Service Period” means the period for which Customer has purchased the Services and any subsequent renewal periods and shall commence:

- (a) for Software Licenses for which Services are mandatory, on the date the applicable Software License Key(s) are made available for download, and
- (b) for Software Licenses for which Services are optional, on the date of purchase of the Services.

“Severity” means the relative impact an Error has on the use of the Software, as determined by MST. The following Severity levels apply to all MST Software:

- (a) **“Severity One”** means Customer’s production server or other mission critical system(s) are down and no workaround is immediately available and (i) all or a substantial portion of Customer’s mission critical data is at a significant risk of loss or corruption; (ii) Customer has had a substantial loss of service; or (iii) Customer’s business operations have been severely disrupted.
- (b) **“Severity Two”** means that major functionality is severely impaired such that (i) operations can continue in a restricted fashion, although long-term productivity might be adversely affected; (ii) a major milestone is at risk; ongoing and incremental installations are affected; or (iii) a temporary workaround is available.
- (c) **“Severity Three”** means a partial, non-critical loss of functionality of the software such that: (i) the operation of some component(s) is impaired but allows the user to continue using the Software; or (ii) initial installation milestones are at minimal risk.
- (d) **“Severity Four”** means (i) general usage questions and cosmetic issues, including errors in the Documentation, and (ii) cases opened via e-mail.

“Software” means all MST proprietary software and components shipped with the MST Software excluding any Third Party software authored and owned by other third party which is provided for accessing the services.

“Subscription Services” means all Maintenance Releases, Minor Releases and Major Releases of the Software given to the Customer, as defined below. The Subscription Services do not include developer’s assistance, which might include, but is not limited to, Customer’s customization of the Software or Customer’s integrations of the Software with Customer-developed or third-party developed software.

- (a) **“Maintenance Release”** means publicly released code, patches, and updates of the Software, designated by MST by means of a change in the digit to the right of the second decimal point in Software version number (e.g. Release 1.0 >> Release 1.0.1).

- (b) **“Minor Release”** means publicly release code with a limited amount of new features and functionality, patches and updates to the Software, designated by MST by means of a change in the digit to the right of the decimal point in Software version number (e.g. Release 2.0>>Release 2.1).
- (c) **“Major Release”** means publicly release code with enhancements, corrections, patches and updates to the Software, designated by MST by means of a change in the first digit in software version number (e.g. Release 1.0 >> Release 2.0).

“Technical Support” means the provision of technical assistance by MST to help Customers who are having problem related to installations and errors, at the corresponding Products and Services purchased by the Customer.

“Third Party Products” means any software made publicly available in source code form and is manufactured by party other than MST. Any third party product that is provided by MST as part of the MST Product is provided with the associated license and use of third party product is governed by those associated license terms and not by this Agreement.

2. Service Terms

“Provision of Services” Subject to the terms and conditions of this Agreement, MST will provide Customer with the Service, during the term of this Agreement. In addition, MST grants Customer a personal, non-sub licensable, nonexclusive, nontransferable, limited license to internally use the Service for the purposes for which they are provided.

“End of Availability” MST may, at its discretion, decide to stop Software Services from time to time (“End of Availability”). MST shall post notice of End of Availability, including the last date of general commercial availability of the affected Software and the timeline for discontinuing Services.

“Purchase Requirements” Customer may purchase initial Services only for the most current, generally available release of the Software. Except as otherwise provided in the applicable price list, the minimum term for any Services offering is one year. These Service and Subscription Terms and Conditions will automatically update to MST at http://www.ms-technology/files/support_downloads/support_terms_conditions.pdf upon any renewal of Services.

“Exclusions”

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

- (i) Accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by MST; operation of the Software with other media not in accordance with the manufacturer’s specifications; or causes other than ordinary use;
- (ii) Improper installation by Customer or 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) Issues relating to Software offered as a Service (“SaaS”);
- (vi) Any customized deliverables created by MST specifically for Customer as part of consulting services; or
- (vii) 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;
- (viii) Any issue not covered by Technical Support. Customer may request assistance from MST for such problems, for an additional fee.

(b) If MST suspects that a reported problem may be related to Modified Code, MST, in its sole discretion may, inform Customer that additional assistance may be obtained by Customer directly from various product discussion forums or by engaging MST consulting services group for an additional fee.

“Customer’s Responsibilities” MST responsibilities regarding Services are subject to the following:

(a) Customer agrees to receive communications via e-mail, telephone, and other formats from MST related to new MST Services.

(b) Customer’s technical contact shall cooperate to enable MST to deliver the Services.

(c) Customer is solely responsible for the use of MST Software by its personnel and properly trains its personnel on how to use Software.

(d) Customer reports all the problems occurring with the Software to MST, and properly implements solutions provided by MST to get rid from the occurred problems.

(e) Customer is solely responsible for protecting and backing up the data and information stored on the computers on which the Software is used, and should confirm that such data and

information is protected and backed up in accordance with any internal or regulatory requirements as applicable before contacting MST for Technical Support. MST is not responsible for data loss or information in the event of errors or other malfunction of the Software or computers on which the Software is used.

3. Services Offerings and Fees

“Service Fee Terms”

- (a) Service Fees are payable on the Effective Date or, in case of a renewal term, no later than the date of commencement of the applicable Service Period. Service Fees are non-refundable.
- (b) If Customer renews or adds a Services offering that has a minimum term of one year, Customer may elect to make Services for all or a portion of its Software licenses coterminous with the renewed or added Services. In such case, MST will prorate the applicable Services Fees to extend the current Services Period to make it coterminous with such renewed or added Services.
- (c) For Software that is licensed on a perpetual basis, if a Customer purchases Services after acquiring the Software licenses, or had elected not to renew Services and later wishes to re-enroll in the Services,

Customer must pay:

- (i) The applicable Service Fees for the current Service Period;
 - (ii) The amount of Service Fees that would have been paid for the period of time that Customer had not enrolled in the Services, and
 - (iii) A twenty-percent (20%) reinstatement fee on the sum of the Service Fees in (i) and (ii).
- (d) In case, where Customer purchases a license to migrate up from one edition of the Software to another (e.g., MST Viewer for .NET to MST Viewer for Java), any unused period of the Service Period on the original license will be converted and used to extend the Service Period for the newly purchased upgraded license. This paragraph (d) shall not apply to enterprise license agreements.
- (e) If Customer originally purchased Services from a MST Authorized Service Provider and is now renewing only Technical Support through such MST Authorized Service Provider, Customer may purchase Subscription Services separately on a renewal basis directly from MST. The renewal fee for such Subscription Services shall be as set forth in the

applicable price list. "Authorized Service Provider" means a third party that is authorized by MST to provide first and/or second level Technical Support for the Software.

"Advanced and Complimentary Offerings"

MST may offer complimentary Services, including MST Complimentary Update Services for certain products. "MST Complimentary Update Services" means the provision of Maintenance Releases and Minor Releases, if any, to Customer. This MST Complimentary Update Service does not include the provision of any Major Releases.

4. Fees and Payment

"Fees" Customer shall pay to MST all fees by their due date specified at the time of Order. Payment for the Subscription Fees shall be payable according to the terms specified in the Order Form. All invoices issued hereunder by MST are due and payable within thirty days of the date of invoice or notice. All fees paid to MST are non-refundable. Payments not received on time are subject to late payments and charges 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 Service Fee is overdue, MST may also suspend performance until such delinquency is corrected.

"Taxes" All payments made by the Customer are exclusive of any taxes, duties, or similar charges imposed by any government. To the extent, any taxes or duties payable by MST, Customer must pay to MST the amount of such taxes or duties in addition to any fees owed under this Agreement. Customer shall pay or reimburse MST 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 Agreement (other than taxes on the net income of MST).

5. Warranty and Disclaimer

“General” MST represents and warrants that (a) it has the authority to enter into this Agreement with Customer; and (b) to MST's knowledge, the Software does not, at the time of delivery to Customer; include malicious code for the purpose of damaging or corrupting the Software.

“Software Warranty” MST warrants that for a period of thirty days following delivery or download of the Software (“Warranty Period”), that the Software will perform substantially in conformance with the published Documentation. The foregoing warranty applies only to failures in operation of the Software that are reproducible in standalone form and does not apply to: (i) Software that is modified or altered by Customer or any third party that is not authorized by MST (ii) Software that is otherwise operated in violation of this Agreement or other than in accordance with the published Documentation; or (iii) failures that are caused by third party software or hardware product or (iv) if failure of the Software has resulted from accident, abuse or misapplication.

To the maximum extent permitted under applicable law, MST's entire liability and Customer's exclusive remedy under the express warranty for any breach of the foregoing warranty, will be, at MST's sole option and expense, promptly repair or replace any medium or Software which fails to meet this limited warranty or, if MST is unable to repair or replace the medium or the Software, refund to Customer, the applicable Fees paid upon return, if applicable, of the non-conforming item to MST. MST will have no obligation under this limited warranty unless notified of a claim within the Warranty Period.

“Disclaimer of Warranty” NOTWITHSTANDING THE FOREGOING, MST DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE SERVICES ARE PROVIDED “AS IS,” AND MST DISCLAIMS WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

6. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, MST SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, OR ANY OTHER LEGAL THEORY, ARISING FROM ITS PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT. 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. MST'S LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE SERVICES FEES PAID BY CUSTOMER TO MST UNDER THIS AGREEMENT DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT MOST DIRECTLY GIVING RISE TO THE CLAIM.

7. Termination

MST may terminate or suspend Customer's access to the Service or Customer's account at any time, for any reason, and without warning, which may result in the forfeiture and destruction of all information associated with Customer's account. MST may also terminate or suspend any and all services and access to the Service immediately, without prior notice or liability, if Customer breach any of the terms or conditions of this Agreement. Upon termination of Customer's account, Customer's right to use or access the Service, and any content contained therein will immediately cease. All provisions of this Agreement which, by their nature, should survive termination, shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability.

8. Confidentiality

Customer and MST mutually agree to maintain the confidentiality of any Confidential Information received during the term of this Agreement and after the termination of this Agreement (howsoever terminated) for a three year period and shall not disclose the Confidential Information to any third party, and shall protect the secrecy of and avoid unauthorized use of the Confidential Information to the same degree that Customer and MST (as the case may be) protects its own Confidential Information and in no event with less than reasonable care. Customer acknowledges that correspondence and log files generated in conjunction with a request for Services may contain sensitive, confidential or personal information. Customer is solely responsible for taking the steps it considers necessary to protect such data, including obfuscating the logs or otherwise guarding such information prior to sending it to MST.

9. Other

Customer may not assign or delegate this Agreement to any third party without the prior written consent of MST. This Agreement shall be governed by the laws of the State of North Carolina without regard to its conflict of laws principles. The parties consent to the exclusive jurisdiction of the state and federal courts located in Mecklenburg County, North Carolina. This Agreement constitutes the entire agreement of the parties with respect to the provision of the Services by MST to Customer, and supersedes all prior written or oral communications, understandings and agreements. This Agreement may not be amended except in a written document signed by both parties. Any waiver of the provisions of this Agreement must be in writing to be effective. Except as expressly set forth herein, no terms of any purchase order or other business form that Customer may use will affect the obligations of the parties under this Agreement, and any such purchase order or other business form of Customer which contains additional or conflicting terms is hereby rejected by MST. Customer agrees that purchase orders do not have to be signed to be valid and enforceable. If any provision of this Agreement is found to be invalid or unenforceable, the remaining terms will continue to be valid and enforceable to the fullest extent permitted by law. MST may update the Technical Support Guide and support policies periodically, without prior notice and the updated version will be found at http://www.ms-technology/files/support_downloads/support_terms_conditions.pdf.