



TOPBRAID LIVE SUPPORT AND MAINTENANCE (TSM)

This TopBraid Support and Maintenance (TSM) Agreement sets forth TopQuadrant’s maintenance and support terms and conditions for Customer for the Server Products, and is hereby incorporated into the Agreement. Defined terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement.

1. TOPBRAID SUPPORT AND MAINTENANCE.

Throughout the Support Term (as defined below), so long as Customer is in conformance with the Agreement or this TSM Agreement, or any other executed agreement or addendum between the parties, TopQuadrant shall provide Company with Support Services (as defined below). For clarification, Support Services do not include modifications to upgrades to customize such upgrades for usage in Customer’s environment.

- a. Support and Maintenance Fees. Customer shall pay TopQuadrant support and maintenance fees at rates per the following schedule (“Support Fees”):

Developer License: \$3,627 annually

Production License:

Up to 50 users: \$6,529 annually
From 51 - 100 users: \$11,606 annually
From 101 - 200 users: \$18,135 annually
From 201 - 500 users: \$25,389 annually

1 Processor: \$7,254 annually
2 Processors: \$10,881 annually
4 Processors: \$18,135 annually
8 Processors: \$25,389 annually

Support Fees are calculated at 18 % of the License Fees. Customer shall pay Support Fees annually at the beginning of the Initial Support Period (as defined below) and each Renewal Support Period (as defined below), in accordance with the terms of the Agreement. TopQuadrant shall be entitled to increase the Support Fees once annually by an amount not to exceed five percent (5%) each year, upon notice to Customer. Customer understands that if Customer discontinues and then resumes purchase of Support Services, Customer will be required to pay TopQuadrant the entire Support Fees for the period of discontinuance¹, plus the Support Fees for the term of Support Services then commencing. Customer agrees to pay or reimburse TopQuadrant for any out-of-pocket expenses (including, but not limited to, travel and related expenses²) incurred by TopQuadrant at the request or with the approval of Customer in connection with the performance of Support Services. TopQuadrant will invoice Customer for Support Fees thirty (30) days prior to the beginning of each Renewal Support Period, and periodically for reimbursable expenses. In all cases, unless otherwise agreed in writing by TopQuadrant, payment is due within thirty (30) days after the date of the invoice. All amounts hereunder are exclusive of all federal, state, local, national, and international taxes.

2. SUPPORT DURING SUPPORT TERM.

Subject to timely payment of the Support Fees and compliance with the terms of the Agreement by Customer, TopQuadrant agrees to provide the support services set forth below (together, the “Support Services”) in connection with the Software. The parties agree that TopQuadrant shall have no obligation to provide any maintenance or support services except as expressly set forth herein.

- a. Customer Support Contacts. Customer will designate no more than two persons who will be Customer’s primary support contacts for Support Services (the “Customer Support Contacts”). The Customer Support Contacts may be changed from time to time upon written notice from Customer to TopQuadrant. Customer agrees that all Support Service inquiries from Customer’s individual users will be directed to the Customer Support Contacts and, to the maximum extent practicable, Customer’s communications with TopQuadrant for Support Services will be through the Customer Support Contacts.

¹ In no event will the total cost be higher than if the customer paid for the entire fee for the interrupted period of time.

² All travel and related expense will be in accord with Joint Travel Regulations

TOPQUADRANT CONFIDENTIAL

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- b. Telephone Support. TopQuadrant will make telephone hotline support available to the Customer Support Contacts for questions regarding the use of only the most current standard version, and the immediately prior standard version, of the Software released by TopQuadrant, and to help the Customer Support Contacts to resolve problems with such Software (“Telephone Support”). Telephone Support will be made available on business days from 8:00am through 5:00pm Eastern Time, TopQuadrant holidays excluded. Customer understands and agrees that Telephone Support provided by TopQuadrant at other times, if any, will be solely on an “as available” basis.
- c. Software Maintenance and Support. TopQuadrant will provide software maintenance services for reported material, reproducible problems and verified errors (“Errors”) that Customer encounters in using the most current standard version, or the immediately prior standard version, of the Software released by TopQuadrant. TopQuadrant shall use commercially reasonable efforts to respond, remedy, and resolve Errors reported by Customer in accordance with TopQuadrant’s standard maintenance procedures. TopQuadrant reserves the right to reasonably modify its standard maintenance procedures upon thirty (30) days prior written notice to Customer. TopQuadrant’s current standard maintenance procedures call for the following issue response times:

Severity Code	Severity Level Definition	First Return Callback Within	Resolution Within
1	<p>Software is not operational or Customer experiences a complete loss of service; work cannot reasonably continue; the operation is mission critical to the Customer’s business and the situation is an emergency; no work around exists, or work around exists, but is unacceptable due to impact on Customer’s business.</p> <p>A Severity 1 incident has one or more of the following characteristics:</p> <ul style="list-style-type: none"> - A critical documented function is not available - System hangs indefinitely, causing unacceptable or indefinite delays for resources or response - System crashes, and crashes repeatedly after reset attempts 	1 hour during normal business days*	Acceptable work around within 6 hours after the first callback; resolution within 2 business days or such other time as may be mutually agreed upon by the parties
2	Software is operational, but functionality is seriously affected; a severe loss of service; no acceptable workaround is available; however, operation can continue in a restricted fashion, but loss in functionality can only be sustained by Customer for a few working days.	4 hours during normal business days*	Acceptable work around within 2 business days after the first callback; resolution within 4 business days or such other time as may be mutually agreed upon by the parties
3	<p>Software is operational, but a portion is not operating as documented or warranted; a minor loss of service with minor business impact and/or an acceptable temporary work around exists; or</p> <p>Customer has a time-sensitive question on the operation of the Software that is not answered in the documentation for the Software.</p>	24 hours during normal business days	10 business days
4	Customer has a non-urgent issue or problem; Software is operating substantially in accordance with specifications.	48 hours during normal business days	Considered for the inclusion in the next update or upgrade

*Severity 1 and 2 case tickets logged outside of regular business hours (weekdays 9:00 AM to 9:00 PM ET) will get call back by 10:00am ET next business day.

- d. Updates and New Releases. TopQuadrant will also make available to Customer as part of Support Services such periodic standard updates, patches, bug fixes, modifications and enhancements to the current standard version of the Software as TopQuadrant generally makes available at no additional cost to TopQuadrant’s other customers of the Software who subscribe to Support Services; and such standard new versions of the Software which are released by TopQuadrant on a general basis and made available at no additional cost to TopQuadrant’s other customers subscribing to Support Services. All updates, patches, bug fixes, modifications, enhancements and new versions of the Software and all other deliverables and work product hereunder provided to Customer shall be deemed licensed as “Software” under, and subject to, the terms and conditions of the Agreement.

- e. Exclusions. Support Services extend only to the Software free of any Modifications that have been made by persons other than TopQuadrant or its agents, or approved by TopQuadrant in writing. Further, Support Services extend only to the most current standard version and immediately prior standard version of the Software as used on or in the hardware, platforms and operating environment(s) designated by TopQuadrant for use with the Software. Support Services also do not include, and TopQuadrant shall have no responsibility or liability for, the following: (i) addressing errors, defects, or damage in or to the Software resulting from causes other than those arising in the ordinary use of the Software, or from the use of third-party software, firmware or data, or from the use of hardware not meeting TopQuadrant's recommended configuration; (ii) providing hardware-related services; (iii) providing network related support and outage resolution including but not limited to, response time, availability or connectivity; (iv) providing training to Customer's personnel; or (v) developing or otherwise providing Customer with additional features, functionality, or customizations to the Software. Other professional services of TopQuadrant, such as, for example, but without limitation, those described in items (iv) and (v) above, may be made available to Customer under a separate services agreement, subject to availability and TopQuadrant's pricing then in effect.
- f. Assistance. Customer will reasonably assist TopQuadrant in verifying, reproducing, and correcting Errors. For example, assistance may include providing telecommunications connections in Customer's computer equipment and providing sample output and other diagnostic information. Error correction is subject to verification and reproduction of the Error by TopQuadrant. Error correction may include a temporary work-around, patch, or bypass supplied by TopQuadrant, or temporary implementation by Customer of a computer or operational procedure, in order to diminish or avoid the effect of the Error.

3. TERM AND TERMINATION.

Support Services shall commence on the date the license to the Software is purchased by Customer (which, for purposes of this TSM Agreement, shall be the date of TopQuadrant's invoice for payment of the license fee) and shall continue until the first anniversary of such date (the "Initial Support Period"). The Support Services shall automatically renew for additional one-year periods (each, a "Renewal Support Period"; the Initial Support Period and all Renewal Support Periods together, the "Support Term") upon expiration of the Initial Support Period or any Renewal Support Period unless either party provides notice of termination at least ninety (90) days prior to the scheduled expiration date. Support Services may also be terminated in accordance with the following:

- a. Termination of Support Generally. TopQuadrant may terminate Support Services upon ninety (90) days prior written notice to Customer in the event TopQuadrant ceases to provide Support Services for the Software on a general basis.
- b. Breach or Nonpayment. Either party shall have the right to terminate Support Services upon the other party's material breach of these Support Terms or the Agreement and failure to cure same within thirty (30) days after receipt of notice from the non-breaching party describing the breach. Customer acknowledges that nonpayment of Support Fees constitutes a material breach of these Support Terms.
- c. Bankruptcy. Either party shall have the right to terminate Support Services if the other party commences or becomes subject to bankruptcy or similar proceedings and such proceedings are not dismissed within sixty (60) days of filing.
- d. Termination of Agreement. For clarification, TopQuadrant's obligation to provide Support Services shall immediately terminate upon termination of the Agreement for any reason.

4. EFFECT OF TERMINATION.

Termination of this Agreement by either party shall not act as a waiver of any breach of this Support Agreement and shall not act as a release of either party hereto from any liability for breach of such party's obligations under this Support Agreement. Within forty-five (45) calendar days following the termination of this Support Agreement, each party shall pay to the other party all sums, if any, due and owing as of the date of expiration or termination, net of any amounts due from the other party as of such date.

5. LIMITED WARRANTY AND DISCLAIMER.

TopQuadrant warrants that the Support Services will be performed in a workmanlike and professional manner, consistent with applicable industry practices. EXCEPT FOR THE EXPRESS WARRANTIES MADE BY SUPPLIER IN THIS SECTION 6, SUPPLIER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. SUPPLIER DOES NOT WARRANT THAT ANY OR ALL ERRORS OR DEFECTS IN THE SOFTWARE WILL BE CORRECTED. THIS DISCLAIMER AND LIMITATION IS CUMULATIVE WITH, AND NOT INTENDED TO REPLACE, THE LIMITATIONS OF SUPPLIER LIABILITY AND REMEDIES AGAINST SUPPLIER SET FORTH IN THE AGREEMENT.