

General Terms and Conditions (US) concerning software maintenance

I. Preface

- 1) The following terms and conditions of Open-Xchange concerning the maintenance of the Software (GTC Maintenance) apply to all customers of Open-Xchange concerning the delivery of software maintenance services.
- 2) The GTC Maintenance applies exclusively. Contrary, divergent, or additional terms and conditions of the customer with respect to the maintenance service rendered by Open-Xchange, including any such terms and conditions contained on ordering documents, shall not apply and are expressly objected to by Open-Xchange unless Open-Xchange has expressly consented to their applicability in writing. The GTC Maintenance also applies if Open-Xchange provides deliveries and services unconditionally with knowledge of customer's contrary, diverging, or additional terms and conditions.

II. Definitions

- 1) Public PTF = modification of a software with the aim of solving one or more specific problems.
- 2) Minor Release = modification of a software with the aim of solving several errors; additionally function expansions or API expansions not modifying or interfering with the current functionality.
- 3) Major Release = modification of a software with regard to an extended functionality. Essential functional modifications as well as modifications in the API, configurations and database structures are possible.

III. Offer and Acceptance

- 1) The customer's order is a binding offer. Open-Xchange can accept such an offer within two weeks by sending an order confirmation or by delivering the ordered goods (i.e. the maintenance key) within such two week period.

IV. Subject of the contract

- 1) Open-Xchange provides the maintenance services regarding the software mentioned in the delivery note (Software) for the contractually agreed duration. Open-Xchange maintains the Software in the current version named in the maintenance contract taking into account prior maintenance services provided up to the point of the current maintenance services.

2) Open-Xchange grants the customer the right to use the PTFs, Minor- and Major Releases delivered in pursuance of the maintenance contract for the duration of the maintenance contract.

V. Extent of Maintenance Services

1) The software maintenance services include the delivery of PTF's, Minor- and Major releases but not the installation of the Software, PTF, Minor- or Major Releases. The software maintenance services do not include any support services or consulting services. Such additional services can be obtained by entering into separate written agreements with Open-Xchange for such services (cf. section V.)

2) Open-Xchange will provide the customer with specific latest releases of the Software in order to keep the Software up to date and to prevent malfunctions. Open-Xchange provides the customer with PTFs, Minor- and Major Releases of the Software for this purpose. These respective latest releases of the Software are collectively called "New Versions".

3) Open-Xchange may additionally provide successor products from time to time. The supply of these successor products is not part of the maintenance services.

4) The customer may only receive the maintenance services if the customer has installed the Open-Xchange Report Client (cooperation obligation on the part of the customer).

VI. Additional Services

1) If a service requested by the customer due to a failure report and provided by Open -Xchange is not covered by the maintenance contract as defined in section IV, customer shall pay Open-Xchange the applicable fees based on the applicable price lists.

2) Upon the customer's request for additional services not set forth on the price lists, Open-Xchange will perform such additional services if performance is commercially feasible and subject to customer's payment of Open-Xchange's applicable fees.

VII. Cooperation Responsibilities

1) The customer shall support Open-Xchange free of charge in every respect in Open-Xchange's provision of the maintenance services. This includes, in particular, submitting written deficiency reports and problem reports upon request and providing further data and protocols that Open-Xchange deems appropriate for the analysis of

defects.

- 2) The customer shall install and check New Versions and report visible defects immediately.
- 3) The customer shall report occurring errors immediately and shall support Open-Xchange in the course of error analysis and error recovery within the bounds of what is reasonable. The customer shall install the Open-Xchange Report Client and send the automated number of active users via the Report Client. If the customer does not install the Open-Xchange Report Client and send Open-Xchange the relevant automated reports on a regular basis, Open-Xchange shall not be obliged to perform maintenance services. Further, Open-Xchange may terminate this contract immediately without notice if the customer fails to comply, in whole or in part, with the foregoing obligations.

VIII. Fees and Taxes

- 1) The annual maintenance fee shall apply regardless of whether and how often the maintenance services under the terms and conditions of the maintenance contract are made use of.
- 2) The maintenance fee is to be paid annually in advance. The payment of the remuneration for additional services according to section V. is to be paid immediately after the additional services have been provided. All payments shall be due upon receipt of the invoice. All fees and payments are nonrefundable.
- 3) All prices shall be exclusive of VAT applicable at the time the services are provided.
- 4) On each annual anniversary date of this Agreement, Open-Xchange shall be entitled to adjust the maintenance fee and applicable price lists to Open-Xchange's then-current fees and prices. If the increase of the maintenance fee exceeds 10 % compared to the previous year, the customer is entitled to terminate the maintenance contract by providing Open-Xchange with ten (10) days prior written notice.

IX. Terms of Contract and Cancellation

- 1) This contract shall be effective on the day following the delivery of the Maintenance Key to the customer. The Maintenance Key shall be deemed delivered to customer as of the date of the delivery is made by Open-Xchange.
- 2) If not agreed otherwise, the initial term of this maintenance contract shall be one

year from the delivery date and it shall automatically be extended for successive one year periods unless terminated in writing by either party with notice to the other party at least three months prior to the expiration of the then-current term.

- 3) Either party may terminate this maintenance contract immediately upon any material breach of this contract by the other party.
- 4) Notice of termination shall be given in writing in order to be valid.
- 5) If the maintenance contract is cancelled or terminated, Open-Xchange shall be entitled to remuneration for the maintenance services delivered up to and including the date of termination of the contract on a pro rata basis.

X. Delay

- 1) If the customer sustains a loss because of the delay of the maintenance services caused by the negligence of Open-Xchange, the customer may claim, at the exclusion of further claims, compensation for delay. Such compensation for delay shall be as follows: for each full week of the delay 0.5 % of the value of the annual maintenance fee, but in no event more than five percent 5% of the annual maintenance fee.
- 2) Subject to sections XI and XII, the customer shall not be entitled to make further claims, including without limitation claims for damages, or receive any additional remedies. This Section X sets for customer's exclusive remedy and Open-Xchange's sole liability to customer for delays in the performance of maintenance services.

XI. Default

- 1) If the maintenance service is not provided in all material respects in accordance with this contract, Open-Xchange shall promptly remedy its performance without additional charge to the customer. Customer shall immediately notify Open-Xchange of any deviation, but no more than 2 weeks after customer became aware or should have become aware that the maintenance service has not been provided in all material respects in accordance with this contract. If Open-Xchange is unable to remedy the deficiency, the customer shall be entitled to terminate this contract by providing written notice.
- 2) If this contract is terminated pursuant to the foregoing, Open-Xchange shall be entitled to remuneration for the services delivered up to and including the date of termination of the contract on a pro rata basis.
- 3) Subject to section XII, the customer shall not be entitled to make further claims,

including without limitation claims for damages, or receive any additional remedies. This Section XI sets for customer's exclusive remedy and Open-Xchange's sole liability to customer for failure to perform the maintenance services in all material respects in accordance with this contract.

XII. Liability

1) Except with respect to Open-Xchange's gross negligence or willful misconduct, in no event shall Open-Xchange or its employees or agents be liable to customer or any other party for any indirect, special, incidental, or consequential damages of any kind, including such damages due to loss of data, profits, or computer failure arising from this contract or the services, whether resulting from tort (including negligence), breach of contract, or other form of action, even if advised of the possibility of such damage and notwithstanding the failure of the essential purpose of any remedy.

2) In no event will Open-Xchange's aggregate, cumulative monetary liability for any damages arising from or related to this Agreement, whether in contract or in tort or under any other legal theory (including strict liability and negligence), exceed 500% of the maintenance fees actually paid by customer to Open-Xchange in connection with this contract within the twelve month period immediately preceding the event giving rise to the claim, provided that nothing in this contract shall operate so as to restrict or exclude any liability for death or personal injury caused by Open-Xchange's negligent acts or omissions.

XIII. General Provisions

1) This contract will be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of laws principles and specifically excluding the provisions of the United Nations Convention on the International Sale of Goods. Any legal action or proceeding with respect to this Agreement will be brought in the United States District Court for the Southern District of New York or any state court located in such Southern District. By execution and delivery of this Agreement, each of the parties hereto accepts for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts.

2) If any provision of this contract is found by any court, tribunal or administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this contract and will be

ineffective without, as far as is possible, modifying any other section or part of this contract, and the legality and enforceability of the other provisions of this contract will not be affected.

3) This contract constitutes the complete and exclusive understanding and agreement of Open-Xchange and the customer relating to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements and communications with respect to the subject matter hereof.

4) Any amendment to this contract or waiver of its terms or conditions must be made in writing signed by a duly authorized representative of each party.

5) EXCEPT AS EXPRESSLY OTHERWISE PROVIDED HEREIN, THE SERVICES ARE PROVIDED BY OPEN-XCHANGE AS IS AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, OPEN-XCHANGE DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, ORAL OR WRITTEN, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF NONINFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY OPEN-XCHANGE, ITS EMPLOYEES OR AGENTS SHALL CREATE ANY WARRANTIES.

6) This contract will bind and inure to the benefit of each party's successors and assigns, provided that customer may not assign this Agreement, in whole or in part, without Open-Xchange's prior written consent. Any attempt to assign this Agreement without such consent will be null and void.

7) Neither party will be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of civil or military authorities, denial of or delays in processing of export license applications, fire, floods, earthquakes, accidents, strikes, or fuel crises, provided that such party gives prompt written notice thereof to the other party.

8) The General Terms and Conditions (US) version of this contract shall govern with respect to all customers with principal offices located in the United States.

Date: October 2010