

# SMARTENGINE SUPPORT TERMS & CONDITIONS

These wtec smartengine Support Terms and Conditions (the "Support Terms") apply to any customer ("Customer") who is entitled to receive support services ("Services") from wtec, Inc. ("wtec") for specific wtec hardware product(s) and/or software products designated in an Agreement (as defined below) (respectively, the "Hardware Product" and the "Software Product," and together with the Hardware Product, the "Products") pursuant to a written agreement or order between Customer and wtec (or its authorized reseller or distributor, as applicable) (an "Agreement"). Customer is entitled to receive only the support specified for the applicable Support Plan and term that Customer has ordered and paid for pursuant to such Agreement.

## 1. DEFINITIONS.

- 1.1 "Error"** means a failure in the Software Product or Hardware Product to materially conform to the specifications described in the applicable product documentation ("**Documentation**").
- 1.2 "Modified Code"** means any modification, addition and/or development of code scripts deviating from the predefined product code tree(s)/modules developed by wtec for production deployment or use.
- 1.3 "Services Fees"** means the fees for Services specified in a corresponding wtec or reseller invoice.
- 1.4 "Services Period"** means the period for which Customer has purchased the Services and any subsequent renewal periods and shall commence.
- 1.5 "Support Plan"** means the level of Services Customer is entitled to, as set forth in an Agreement.
- 1.6 "Third Party Products"** means any software or hardware that is manufactured by a party other than wtec and is either:
- (i) not delivered with the Products; or
  - (ii) not incorporated into the Products.

## 2. SERVICE TERMS.

- 2.1 Provision of Services.**  
wtec agrees to provide the Services purchased by Customer as set forth in the applicable Support Plan documentation during the Services Period. wtec reserves the right to increase the level of Services offered for a specific Support Plan at its sole discretion.
- 2.2 Combined Use.**  
Customer must purchase the same level of service entitlement for all components in a system. Customer will notify wtec prior to any combined use of Hardware Product(s) and Software Product(s) initially purchased for use in separate systems and will upgrade to the highest level of Services entitlement existing in the newly combined system. Customer also will pay any additional Services Fees required by wtec, as calculated in accordance with wtec's then-current price list.
- 2.3 End of Availability.**  
wtec may, at its discretion, decide to retire a previous version of a Software Product and/or Services from time to time ("End of Availability"). wtec shall publicly post for all customers notice of End of Availability. wtec shall have no obligation to provide Services for such previous versions of Software Products that are subject to an End of Availability notice.

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### 2.4 Exclusions.

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

(i) unusual external physical factors such as inclement weather conditions that cause electrical or electro magnetic stress or a failure of electric power, air conditioning or humidity control; neglect; misuse; operation of the Products with other media not in accordance with the manufacturer's specifications; or causes other than ordinary use;

(ii) use of the Products that deviates from any operating procedures as specified in the Documentation;

(iii) Third Party Products, other than the interface of the Software Products with the Third-Party Products;

(iv) Modified Code;

(v) any customized deliverables created by wtec, wtec partners or third-party service providers specifically for Customer as part of consulting services;

(vi) APIs, interfaces or data formats other than those included with the Software Products and supported as set forth in the Documentation. Customer may request assistance from wtec for such problems, for an additional fee.

**(b)** In the event that wtec suspects that a reported Error may be related to Modified Code, wtec, may, in its sole discretion,

(i) request that the Modified Code be removed, and/or

(ii) inform Customer that additional assistance may be obtained by Customer directly from various product discussion forums or by engaging wtec's consulting services group for an additional fee.

### 2.5 Replacement of Hardware Products and Return Material Authorization.

Prior to making any claim under the Warranty, Customer shall contact wtec support and

(i) notify wtec of the defect in the applicable Product;

(ii) provide the applicable Product serial number to wtec; and

(iii) request an RMA number from wtec.

If wtec determines that such Product is eligible for the Warranty, wtec shall provide Customer with an RMA number and Customer shall include such RMA number on the shipping package for a returned Product. Customer shall be responsible for all shipping costs associated with returning a Product to wtec and wtec shall be responsible for all shipping costs associated with shipping a repaired Product or replacement Product to Customer. wtec will not accept a return of a Product without an associated RMA number. Unless repaired, all defective Products become the property of wtec, and Customer hereby assigns all right, title, and interest in and to such defective Products to wtec.

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In the event the resolution of a support case initiated with wtec Support is a failure of a Hardware Product, Customer will notify wtec of its intent to return such Hardware Product within fifteen (15) calendar days of the support case resolution. Hardware Product replacement is subject to wtec's Return Material Authorization ("RMA") procedure described above. Failure to return the applicable Hardware Product within the fifteen (15) days specified above or their return in a condition rendering them unsupported shall entitle wtec to invoice Customer for the cost of the replacement Hardware Product supplied, calculated in accordance with the wtec's then-current price list. Customer will ensure that the failed Hardware Product is free of any legal obligations or restrictions that could prevent its replacement.

**2.6 Customer Responsibilities.** wtec's obligations regarding Services are subject to the following:

- (a) Customer will designate up to four (4) technically qualified employees to serve as Customer's primary points of contact in relation to the receipt of the Services.
- (b) Customer agrees to receive from wtec communications via e-mail, telephone, and other formats, regarding Services (such as communications concerning support coverage, Errors or other technical issues and the availability of new releases of the Software Products and training options).
- (c) Customer's technical contact shall cooperate to enable wtec to deliver the Services.
- (d) Customer is solely responsible for the use of the Products by its personnel and shall properly train its personnel in the use and application of the Products.
- (e) Customer shall promptly report to wtec all problems with the Products and shall implement any corrective procedures provided by wtec reasonably promptly after receipt.
- (f) Customer is solely responsible for protecting and backing up the data and information stored on or via the Products 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 wtec for Services. wtec is not responsible for lost data or information in the event of errors or other malfunction of the Products.
- (g) Customer will have dedicated resources available to work with wtec technicians.

## 3. SERVICE FEES.

### 3.1 Service Fee Terms.

Service Fees are payable on commencement date of the Services Period or, in the case of a renewal of such Services Period, no later than the date of commencement of such renewed Services Period. Services Fees are non-refundable.

### 3.2 Reinstatement of Lapsed Support.

In the event that Customer wishes to reinstate Services after a lapsed period following expiration or termination of the original Services Period, Customer will pay to wtec an amount equal to the Services Fees that would have been due for accrued Services during such lapsed period, as well as any applicable reinstatement fee and the amount due for the go-forward Services Period being purchased. All such amount will be calculated in accordance with wtec's then current price list.

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### 4. MISCELLANEOUS TERMS.

#### 4.1 Payment Terms.

wtec will invoice Customer for Services promptly following Customer's purchase. Customer shall pay all amounts due under such invoice by the date set forth in such invoice, or if no such date is included, not later than the commencement date of Customer's applicable Services Period. By placing an order for Services, Customer represents that Customer is authorized pursuant to applicable laws and regulations to commit to payment prior to completion of the Services Period, as set forth herein. Services Fees are exclusive of any taxes, duties, or similar charges imposed by any government. Customer shall pay or reimburse wtec 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 wtec). Amounts not paid on time are subject to a late charge 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 Services Fee is overdue, wtec may also suspend performance until such delinquency is corrected.

#### 4.2 Limited Warranty.

wtec warrants that the Services to be performed hereunder will be done in a workmanlike manner and shall conform to industry standards. Upon Customer providing wtec with a reasonably detailed written notice to cure within thirty (30) days of occurrence of the nonconformance, wtec will re-perform the Services to achieve commercially reasonable conformance with the above warranty. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY IS GIVEN EXPRESSLY AND IN PLACE OF ALL OTHER WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TO THE MAXIMUM EXTENT MANDATED BY LAW, THIS REMEDY WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF SERVICES TO THE FOREGOING WARRANTY.

#### 4.3 Limitation of Liability.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, wtec SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT 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. wtec's LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE SERVICES FEES PAID BY CUSTOMER TO wtec UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT MOST DIRECTLY GIVING RISE TO THE CLAIM.

#### 4.4 Subcontracting.

wtec has the right to subcontract the Services provided under this Agreement to any of its authorized service providers.

#### 4.5 Termination.

wtec may terminate the Agreement and all Services at any time if Customer is in material breach of this Agreement.

#### 4.6 Data Sharing.

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 wtec.

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### 4.7 Other.

Customer may not assign or delegate this Agreement to any third party without the prior written consent of wtec. wtec may assign this Agreement without Customer's consent in wtec's sole discretion. This Agreement shall be governed by the laws of the State of California without regard to conflict of laws principles. The parties consent to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California. This Agreement constitutes the entire agreement of the parties with respect to the provision of the Services by wtec 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 are hereby rejected by wtec. 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. wtec may update its support offerings and policies periodically, without prior notice.