

# IPsoft/Amelia Software Maintenance

## IPsoft/Amelia Customer Support and Maintenance Services – Standard Maintenance Schedule

This Maintenance Schedule (the “Schedule”) establishes the terms and conditions under which the contracting IPsoft entity will provide support, subject to the timely payment of Maintenance Fees as specified in the applicable Order.

For the purposes of this Schedule, “You” or “Customer” refers to the party that has purchased IPsoft Software Maintenance Services. “IPsoft,” “We,” or “Us” refers to the IPsoft contracting party and the relevant affiliate(s) that is providing support and maintenance under this Schedule.

### 1 **SCOPE OF SUPPORT SERVICES**

1.1 **Scope.** IPsoft shall provide to You Customer Support related to the IPsoft software defined in Your Order (the “Product”) and make certain consulting services, technical advice, and training related to the Product available to You on a 24x7x365 basis. Such consulting and training services may be provided by telephone or made available online. Additional consulting and training services will be provided at such times as are mutually agreed upon by the parties and as set forth in an applicable Order.

1.2 **Service Level Agreement for “SaaS” / Hosted Products.** If the Product being provided to You is hosted by IPsoft (as specified in your Order), **Schedule A** (IPsoft SLA for Hosted/SaaS Solutions) will apply. Schedule A will not apply in any instance where IPsoft is not hosting the Product or if IPsoft does not have full control over the environment in which the Product is hosted (for example, a hybrid cloud instance blending IPsoft hosting with Your private cloud service).

### 2 **SCOPE OF MAINTENANCE SERVICES**

2.1 **Maintenance.** IPsoft shall provide maintenance services to You with respect to the Product as defined herein (the “Maintenance Services”) on a 24x7x365 basis. Maintenance Services shall include both technical services related to the Product, such as Error Correction, and provision of software Releases.

2.2 **Error Correction and Reporting.** IPsoft shall provide Error Correction, as set forth herein, during the term of this Schedule. Such Error Correction will be provided as follows: If You identify an Error, You shall notify IPsoft specifying in detail the nature of such Error and the circumstances under which the Error occurs. Upon IPsoft’s request, You shall deliver to IPsoft necessary information about Your hardware, software, and technical environment needed to reproduce and verify the Error, and where relevant, remote access in accordance with Section 3.2. Within the timeframes set forth below, IPsoft shall provide to You (i) a written proposal as to how the Error may be corrected or avoided, and (ii) a written recommendation as to whether or not correction of the Error is recommended, and the reasons therefor. You agree to review IPsoft’s proposal and recommendation, and to confer with IPsoft to determine the desired Error Correction, if any. An Error will not be deemed to be reported unless and until You have placed a service request with IPsoft regarding the Error.

2.3 **Timeframe for Error Correction.** IPsoft will respond to reports of suspected Errors as follows:

**Severity 1 (“Crash”).** *A crisis has occurred - a system is down, a major operational function is unavailable, or a critical interface has failed (e.g.: the production system is down or crashing frequently; a business-critical function cannot be performed)*

- ***Response Time:*** Within one (1) hour
- ***Resolution Time:*** IPsoft will give the highest scheduling priority and devote available resources to resolve Crash-level Errors. To the extent feasible, IPsoft will provide a bypass or work-around procedure to overcome the effect of the Error within twelve (12) hours after notification and verification of the error. IPsoft will use reasonable best efforts to provide Error Correction for Crash-level Errors within two (2) days after receipt of notification and verification of the Error.
- ***Customer Response Commitment:*** Must be accessible for troubleshooting until the Severity 1 Error is resolved.

**Severity 2 (“High”).** *Any problem critical to continued success and requiring immediate resolution (e.g.: production system is functioning with limited capabilities; services are unstable with periodic interruptions)*

- ***Response Time:*** Within four (4) hours
- ***Resolution Time:*** IPsoft will give the next highest scheduling and resource priority to High-level Errors. IPsoft shall devote reasonable best efforts to provide Error Correction for High-level Errors within three (3) business days after receipt of notification and verification of the Error.
- ***Customer Response Commitment:*** Must be accessible for troubleshooting until the Severity 2 Error is resolved.

**Severity 3 (“Medium”).** *These include problems to be resolved as soon as possible. Most of these have acceptable workarounds, or the recover on their own (e.g.: issues in production systems but the system is still fully functional; malfunctions in non-critical systems)*

- ***Response Time:*** Within one (1) day

- *Resolution Time:* IPsoft will give the next highest scheduling and resource priority to Medium-level Errors. IPsoft shall devote commercially reasonable efforts to provide Error Correction for Medium-level Errors within fourteen (14) days after receipt of notification and verification of the Error.
- *Customer Response Commitment:* Must respond to requests for information and timely implementation of solutions.

**Severity 4 (“Low”).** Situations that are technical questions or issues requiring a “how-to” or “how do I” answer (e.g.: clarification of procedures or information in documentation; attributes or options operating but not as expected; incorrect documentation)

- *Response Time:* Within two (2) business days
- *Resolution Time:* IPsoft will resolve to Low-level Errors in a Maintenance Release or Minor Release.
- *Customer Response Commitment:* Must respond to requests for information and timely implementation of solutions.

**Severity 5 (“Customer-Introduced Errors”).** Situations that result from Customer Cause.

IPsoft will respond to and resolve these on a time and materials basis, as its schedule and resources permit.

2.4 **Reporting.** You shall report suspected Errors in the Product to IPsoft according to the procedures and forms reasonably established by IPsoft. Response times are measured from the time You submit Your Support Request until the time IPsoft responds to you and/or escalates the Support Request (if applicable). Because of the widely varying nature of issues, it is not possible to offer specific resolution commitments.

*NOTE: You will receive a Technical Support Contact Guide from your 1Desk, 1RPA, Co-Pilot, AMELIA, or IPcenter delivery team with detailed support contact information. You may also email [support@ipsoft.com](mailto:support@ipsoft.com); however, you may experience delays while the appropriate team and contact person is notified.*

2.5 **Resolution of Certain Issues.** Providing any of the following information to You shall be considered fulfillment of IPsoft’s obligation to resolve an Error with the Product:

- 2.5.1 information that corrects the Error;
- 2.5.2 information on how to obtain a software solution that corrects the Error;
- 2.5.3 information that identifies the Error as being resolved by using a newer release of the Product, which is or has been made available for implementation to the Customer; and
- 2.5.4 information that the Error has been identified as an issue with Third-Party Materials provided by an individual or entity other than IPsoft or an IPsoft representative.

2.6 **Software Releases.** As part of its Maintenance Services, IPsoft may provide periodic Software Releases.

- 2.6.1 *Maintenance Releases.* From time to time, IPsoft may provide periodic maintenance Releases. Maintenance Releases are generally available Releases of the Product that only provide Error Corrections. Such a Release may be denoted by a change in the digit to the right of the second decimal point (for example, 3.0.0 to 3.0.1) or as otherwise indicated by IPsoft.
- 2.6.2 *Minor Releases.* From time to time, IPsoft may also provide periodic minor Releases. A minor Release is a generally available Release of the Product that provides minor Enhancements as well as Error Corrections. Such a Release may be denoted by a change in the digit to the right of the first decimal point (for example, 3.0 to 3.1) or as otherwise indicated by IPsoft.
- 2.6.3 *Major Releases.* From time to time, IPsoft may also provide periodic major Releases. Major Releases are generally available Releases of the Product that provide major and minor Enhancements and Error Corrections. Such a Release is denoted by a change in the digit to the left of the first decimal point (for example, 3.0 to 4.0) or as otherwise indicated by IPsoft.

IPsoft will provide a licensed copy of all Maintenance Releases and Minor Releases which IPsoft makes generally available to its customers during the Term of this Schedule. IPsoft will waive the license fee, if any, generally charged to customers for the Maintenance Releases and Minor Releases. Maintenance Releases and Minor Releases will be subject to the terms and conditions of this Schedule. New Major Releases of the Product, and new products or services not included within the Product, will only be provided if specified in an Order.

### **3 PROVISION OF SUPPORT AND MAINTENANCE SERVICES**

3.1 **Remote Support.** IPsoft generally will provide IPsoft Software Maintenance Services from IPsoft’s place(s) of business, including by means of telephone or internet telephony, or over the internet via remote access software (the “Remote Services”). You shall, as necessary, give IPsoft access to the appropriate devices and systems and/or install and use remote access software so that IPsoft may provide Remote Services to You. You understand and accept that IPsoft may need to collect and transmit certain diagnostic, technical, usage and related information, including information about your network devices, computer systems, or similar equipment relating to or derived from Your use of the Product.

3.2 **On-site Support.** IPsoft will primarily provide IPsoft Software Maintenance Services from IPsoft’s place(s) of business; however, upon reasonable (approximately two (2) weeks) notice, IPsoft personnel may be available to provide Customer Support and/or Maintenance Services at Your place of business, for a maximum period of two (2) weeks for any given on-site visit and a maximum of six (6) weeks per calendar quarter. Any on-site visit shall subject to a separate Work Order; if no Work Order is issued, then such on-site visit will be charged to You at the then-current time and materials rate (or as otherwise agreed in writing between the parties). The amount of on-site support in each

quarter may be extended by mutual agreement. You shall reimburse IPsoft for any reasonable and necessary travel expenses incurred by IPsoft in connection with such on-site support to the extent such expenses do not exceed IPsoft's travel and expense policies (or, if agreed with You otherwise, as determined pursuant to your travel and expense policies or approval policies).

3.3 **Customer End-User Support.** You shall provide primary support to Your end users.

3.4 **Scheduled Downtime.** IPsoft will use commercially reasonable efforts to (a) schedule downtime for routine maintenance services between the hours of 2:00 a.m. and 4:00 a.m. in Your primary business location; and (b) give You at least twenty-four (24) hours prior notice of all planned outages of the Product/Services ("Scheduled Downtime").

#### **4 LIMITATIONS ON THE SCOPE OF SUPPORT AND MAINTENANCE SERVICES**

4.1 **No Obligations Except as Set Forth Herein.** IPsoft shall have no obligation to provide IPsoft Software Maintenance Services for the Product to You except as set forth in this Schedule. Additionally, IPsoft shall not have any responsibility to develop subsequent components for the Product or additional processes for You, except as explicitly set forth in an Order. Your rights and obligations concerning the use of any Releases (including, but not limited to, Error Corrections, Enhancements, or any other programming provided by IPsoft relating to the Product) shall be as provided under applicable agreement(s) between You and IPsoft. IPsoft shall have sole and exclusive ownership of all right, title, and interest in and to the Product and such Releases (including ownership of all copyrights and other intellectual property rights pertaining thereto), subject only to the license expressly granted to You.

4.2 **Customer Modifications.** You shall inform IPsoft in writing of any modifications to the Product made by You or made for You by third parties ("Customer Modifications"). IPsoft shall not be responsible for maintaining or supporting Customer Modifications or for maintaining portions of the Product affected by Customer Modifications.

4.3 **Custom Development and Non-Standard Requirements.** IPsoft Software Maintenance Services do not include custom software development by IPsoft. Furthermore, IPsoft Software Maintenance Services do not include services that require deviation from IPsoft's standard processes, including (but not limited to) refusal to use IPsoft's automated installation or patching processes, creation of customized installers and software packages, and/or bespoke installation locations ("Non-Standard Requirements"). Unless otherwise specified in a Work Order, custom development and/or Non-Standard Requirements will be provided as Out-of-Scope Services.

4.4 **Improper Use and Customer Cause.** IPsoft shall not be responsible for correcting Errors caused by improper use of the Product by You or for any reason that is a Customer Cause (as reasonably determined by IPsoft).

4.5 **Third Party Technology.** IPsoft shall not be responsible for software or hardware provided by a third party.

4.6 **Hardware.** IPsoft shall not be responsible for maintaining Your hardware, including but not limited to telecommunications devices, components, computers, peripheral devices, and storage media.

4.7 **Outside Conditions.** IPsoft shall not be responsible for correcting Errors caused by conditions outside or beyond its commercially reasonable control, such as environmental and natural disasters, labor strikes, acts of war, viruses or malware introduced by a party other than IPsoft, or a Representative of IPsoft, and/or similar *force majeure* conditions.

4.8 **Out-of-Scope Services.** IPsoft may, in its reasonable discretion, determine whether any Support Requests consist of Out-of-Scope Services. IPsoft is not obligated to provide Out-of-Scope Services. Following a notification from IPsoft to You that the Support Request is deemed an Out-of-Scope Service, if You request in writing that IPsoft perform Out-of-Scope Service, IPsoft may provide the Out-of-Scope Services at IPsoft's then-current time and material rates or as agreed between You and IPsoft.

4.9 **Maintenance Fees.** In consideration for the IPsoft Software Maintenance Services provided by IPsoft in accordance with this Agreement, You shall pay to IPsoft the fees as specified in the applicable Order (the "Maintenance Fees"). Maintenance Fees may be indicated in an Order under various other terms, including but not limited to "maintenance fees," "support and maintenance fees," "support charges," etc. If Maintenance Fees are not separately identified from the License Fee, Platform Fee, or similar fee charged for access to the IPsoft software as specified in the applicable Order, the Maintenance Fees shall be calculated as eighteen percent (18%) of such License, Platform, or similar fee. You shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind (including VAT and GST) imposed by any national, state, or local governmental entity on any amounts payable by You hereunder (other than taxes imposed on IPsoft's income generally). Unless otherwise agreed upon by the Parties in the applicable Order, You shall pay all invoiced Maintenance Fees due to IPsoft within thirty (30) days from the date of IPsoft's invoice and as instructed in such invoice.

Unless otherwise specified in the relevant agreement or in an Order, during the Current Term the Maintenance Fees as specified in the Order are firm and will not be modified. IPsoft may increase the Maintenance Fees, however, upon ninety (90) days' written notice prior to the beginning of any Renewal Support Term.

#### **5 SERVICE CREDITS**

5.1 **Service Credit Amounts.** In the event of a failure by IPsoft to meet the Response Times as set forth in Section 2.3, as Your sole and exclusive remedy, at Your request, IPsoft shall provide Service Credits in accordance with the following:

<b>Severity Level</b>	<b>Service Credits</b>
<b>Severity One: Crash</b>	An amount equal to 1.5% of the portion of the Maintenance Fees applicable in the current calendar month if IPsoft fails to respond within one (1) hour.
<b>Severity Two: High</b>	An amount equal to 0.75% of the portion of the Maintenance Fees applicable in the current calendar month if IPsoft fails to respond within four (4) hours.

<b>Severity Three: Medium</b>	An amount equal to 0.25% of the portion of the Maintenance Fees applicable in the current calendar month if IPsoft fails to respond within one (1) day.
<b>Severity Four: Low</b>	No Service Credits are available for Severity 4.
<b>Severity Five: Customer Caused</b>	No Service Credits are available for Customer Cause.

5.2 Issuance of Service Credits. Any Service Credit due to You under this Schedule will be deducted from subsequent invoices payable by You. IPsoft shall not pay any money or make any refund to You of any accrued Service Credits. In no event will the Service Credit for any calendar month exceed fifteen percent (15%) of the total Maintenance Fees that would be payable for that calendar month if no delay in responding had occurred. In the rare instance that IPsoft fails to respond to Severity 1 or Severity 2 Support Requests within the required Response Times more than three (3) times in one month, You and IPsoft will promptly escalate such failures for resolution through consultation between the parties' management.

5.3 Service Levels, Generally.

- 5.3.1 If You believe that IPsoft has failed to achieve the Error response commitment in any given month, IPsoft will, promptly following Your request, provide a report that contains true and correct information detailing IPsoft's actual Error response performance.
- 5.3.2 You shall reasonably self-diagnose each Error report and recommend to IPsoft an appropriate Severity Level designation. IPsoft shall validate Your Severity Level designation, or notify You of a proposed change in the Severity Level designation to a higher or lower level with justification for the proposal. In the event of a conflict regarding the appropriate Severity Level designation, each party shall promptly escalate such conflict to its management team for resolution through consultation between the parties' management, during which time the parties shall continue to handle the support issue in accordance with the IPsoft Severity Level designation. In the rare instance that a conflict requires a management discussion, both parties shall be available within one hour of the escalation.
- 5.3.3 *Fenced Deployments.* Unless otherwise agreed in an Order, if You require that IPsoft utilize additional hardware, software, VPNs, secured terminals, call-and-response verification, multi-factor authentication, security keys, dongles, non-IPsoft issued computers, or other security measures (collectively, a "Fenced Deployment") in order to provide Error Correction, You accept and agree that no Service Credits will apply until IPsoft personnel are able to directly access the Product. IPsoft will use its reasonable best efforts to connect in as rapid a manner as possible.

**6 SPECIAL MAINTENANCE WARRANTY**

6.1 Limited Special Maintenance Services Warranty. IPsoft warrants, for a period of ninety (90) days following the performance of Special Maintenance Services (specifically, for the purposes of this § 6.1, Special Maintenance Services are those that arise from a Support Request that is determined to be the result of a Customer Cause or are Out-of-Scope Services), that such Special Maintenance Services will be performed in a professional manner and in a manner that is at least equal to applicable industry standards prevailing at the time of performance. IPsoft's entire liability and Your exclusive remedy under this limited warranty is re-performance of such Special Maintenance Services in a manner that conforms with the foregoing limited warranty. Any Special Maintenance Services that are re-performed will be warranted in accordance with the terms and conditions of this Section for the remainder of the original warranty period or thirty (30) days, whichever is longer. All other Maintenance Services will be warranted so long as this Schedule remains in effect.

6.2 Warranty Disclaimer. YOU ACKNOWLEDGE THAT EXCEPT AS EXPRESSLY SET FORTH IN THIS SCHEDULE, IPSOFT HAS NOT MADE ANY REPRESENTATION OR WARRANTY TO YOU REGARDING CUSTOMER SUPPORT AND MAINTENANCE SERVICES. Without limiting the generality of the foregoing, IPsoft disclaims any implied warranty, including, without limitation, any implied warranty of merchantability or fitness for a particular purpose.

**7 TERM**

7.1 Term. This Schedule will come into effect on the date specified in the applicable Order, and shall remain in force for the time specified in the Order (if not specified, twelve (12) months) (the "Initial Support Term"). The Initial Support Term will automatically renew at the then-current IPsoft rates for additional one (1) year term(s) (the "Support Renewal Term," and each collectively with the Initial Support Term, the "Term"), unless notice of non-renewal is provided in writing to IPsoft no later than ninety (90) days prior to the expiration of the Current Term.

7.2 Reinstatement after Termination. If You choose to terminate this Schedule at the conclusion of a Term, you will be permitted to reinstate the Support and Maintenance Schedule within six (6) months without any penalty. For lapses longer than six (6) months, You agree to pay a reinstatement fee equal to fifty percent (50%) of the annual Maintenance Fees in effect at the time of reinstatement.

7.3 Automatic Termination. Notwithstanding the forgoing, this Schedule shall terminate automatically and concurrently with the termination of the applicable Order.

7.4 Termination for Cause. Unless otherwise agreed between the parties, If You or IPsoft is in Material Default, the non-defaulting Party may terminate this Schedule upon written notice to the other Party. A "Material Default" means (a) the defaulting Party's breach of any material duties, obligations, or responsibilities under this Schedule, and failure to cure that breach within fifteen (15) business days after written notice specifying the breach and making reference

7.5 to this § 7.4; or (b) such Party entering into general assignment for the benefit of creditors, or ceasing to conduct its business or operations in the ordinary course, including becoming a party to any insolvency, bankruptcy, receivership, or similar proceeding, which is not dismissed within fifteen (15) business days after its commencement.

## **8 SUPPORT REQUESTS AND CUSTOMER RESPONSIBILITIES**

IPsoft's obligations to You under this Schedule are expressly made conditional upon the following:

8.1 **Compliance with All Agreements.** You must always be in full compliance with Your agreement(s), Order(s), and License(s) related to the Product. Upon written notice, IPsoft may suspend service under this Schedule for any period in which You are in material breach of such terms and conditions.

8.2 **Support Requests.** You may request IPsoft Software Maintenance Services by way of a Support Request, with the Severity designated as specified in Section 5.3.2. Your Technical Contact shall notify IPsoft of each Support Request. Each Support Request should include a detailed description of the support or maintenance required and the time such support or maintenance was determined to be necessary.

8.3 **Customer Personnel.** You shall always ensure that your personnel are properly trained in the operation and use of the Product. You shall designate in writing the individual(s) who will act as a direct liaison with IPsoft and be responsible for communicating with, and providing timely and accurate information and feedback to, IPsoft regarding the Customer Support and Maintenance Services (each such individual, a "Technical Contact"). The Technical Contact will be the liaison between You and IPsoft in sending Support Requests and communicating with IPsoft relating to any matters relating to the provision of the IPsoft Software Maintenance Services. Customer shall provide at least ten (10) days' prior written notice to IPsoft of any change of Technical Contact(s) or in any Technical Contact's name or other contact information. You shall devote such personnel and resources as reasonably necessary to the successful, timely provision of IPsoft Software Maintenance Services.

8.4 **Customer Responsibilities.** You shall, by and through Your Technical Contact(s), provide IPsoft with prompt notice of any Support Request. You shall provide IPsoft with in-person, telephone, and/or high-bandwidth electronic access to Your equipment, software, data, networks, premises, and/or personnel, as reasonably requested by IPsoft and necessary to enable IPsoft to perform its obligations under this Schedule. Additionally, You shall back up all data, files, and information on Your network and systems before IPsoft begins any IPsoft Software Maintenance Services. IPsoft cannot be responsible for any lost or altered data, files, or information.

8.5 **Other Measures.** You shall take all steps necessary, including obtaining or assisting in obtaining any required licenses or consents, as IPsoft from time-to-time requests, to prevent Customer-caused delays in IPsoft's provision of any IPsoft Software Maintenance Services.

## **9 DEFINITIONS**

Unless otherwise defined in the body of this Schedule, capitalized terms used herein are defined as follows:

**"Customer Cause"** means any of the following causes of an Error, except, in each case, any such causes resulting from any action or inaction that is authorized by this Schedule, or the relevant agreement, specified in the then-current Specifications or Documentation, or otherwise authorized in writing by IPsoft: (a) any negligent or improper use, misapplication, misuse or abuse of, or damage to, the Product or Services by You or Your representatives; (b) any maintenance, update, improvement or other modification to or alteration of the Product or Services by You or Your representatives; (c) any use of the Product or Services by You or Your representatives in a manner inconsistent with the then-current Specifications or, to the extent consistent with and not limiting of the Specifications, the Documentation; (d) any use by You or Your representatives of any Third Party Materials that IPsoft has not provided or caused to be provided to You; (e) any use by You or Your representatives of a non-current version or release of the Product (except to the extent that IPsoft and You have agreed to allow non-current versions to be used); (f) any combination or merging of the Product with any hardware or software not supplied or identified as compatible by IPsoft; (g) any relocation or installation of the Product's installed-upon network or system, in whole or in part, by any Person other than IPsoft or IPsoft personnel; (h) any material breach by You of Your obligations under this Schedule or the relevant agreement; or (i) any Error that could have been resolved if You had used a Release, Error Correction, or Enhancement that IPsoft made available to You (and which You refused, directly or indirectly, to implement) prior to the incidence of such Error.

**"Current Term"** means, during the Initial Support Term, strictly the Initial Support Term, and during any Renewal Support Term, strictly the then-current Renewal Support Term.

**"Customer Support"** means support services provided to You by IPsoft customer support personnel, and may be delivered via telephone, email, remote access to Your computers, or by physical on-site presence at Your location by IPsoft personnel. Such Customer Support will be given (i) to answer routine questions regarding the use of the Product; (ii) to assist You in identifying and reporting Errors which may need Error Correction; (iii) to assist You in identifying and reporting new features and functional improvements that may warrant the development of an Enhancement; and (iv) to provide work-around solutions when reasonably available.

**"Documentation"** means any Product specifications as set forth in any manuals or other documentation provided with the Product, in any form or medium that IPsoft makes available to You in hard copy or electronic form.

**"Enhancement"** means any modification or addition that, when made or added to the Product, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Enhancements may be designated by IPsoft as minor or major, depending on IPsoft's assessment of their value and of the function added to the preexisting Product.

**"Error Correction"** means either a modification or an addition that, when made or added to the Software, establishes material conformity of the Product to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Product, eliminates the practical adverse effect on You of such nonconformity.

**"Error"** means any defect or condition inherent in the Product that causes the Product to fail to perform in accordance with the current Documentation published by IPsoft or the Specifications. However, any nonconformity resulting from Customer Cause shall not be considered an Error.

**"Gross negligence,"** whether or not capitalized, refers to conduct that evinces a reckless disregard for or indifference to the rights of others, tantamount to intentional wrongdoing; it differs in kind, not only in degree, from ordinary negligence; and must be proved by clear and convincing evidence.

**"Out-of-Scope Services"** means any of the following: (a) any services that You and IPsoft may from time to time agree in writing are not included in the Customer Support or Maintenance Services; (b) any services requested by You and performed by IPsoft in connection with any apparent Error that is caused by a Customer Cause; (c) any Errors caused by a *force majeure* event; (d) requests for Maintenance Services and Customer Support in excess of the maximum number of service hours covered by the Maintenance Fees, if any; (e) work performed by IPsoft while determining whether any services performed at the Your request are, in fact, Out-of-Scope Services, if so determined; and (f) if, at Your demand, Customer Support or Maintenance Services must be provided by IPsoft personnel whose qualification or experience is greater than that reasonably necessary to resolve the relevant Support Request, provided that an appropriately qualified or experienced individual was available at the time when the Support was sought. Additionally, installation and implementation of Major Releases, custom software development, and Non-Standard Requirements will always be considered Out-of-Scope Services.

**"Person"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

**"Releases"** mean new versions of the Product, which may include both Error Corrections and Enhancements. Such Releases may be provided either as patches to or complete replacement of the Product. A "generally available" release is a release which is available to the IPsoft's customers at large. Releases do not include new products, optional enhancements or new or add-on products that are priced and sold separately by IPsoft. IPsoft is the sole determiner of the availability and designation of a Release.

**"Services"** mean all services (including, but not limited to professional services, implementation, training, and other services) to be furnished to You by IPsoft, its suppliers, or its subcontractors hereunder, as described in the relevant Order.

**"Support Request"** means the communication of a request for Customer Support or Maintenance Services from You to IPsoft, via an acceptable communication method as defined in this Schedule or in a separate agreement.

**"Specifications"** means any minimum requirements or specifications agreed to in the applicable Order or as set forth in the Documentation.

**"Third-Party Materials"** means all materials and information in any form or medium, including any software, documents, data, content, specifications, products, equipment, or components that are not proprietary to IPsoft.

## SCHEDULE A

### IPsoft SLAs for Hosted / SaaS Solutions

A. **Definitions.** The following definitions apply to this Service Level Agreement ("SLA"):

- i. "Actual Uptime" means the total time (in minutes) during the Service Period that the Hosted Services are Available.
- ii. "Agreement" means the Master Framework Agreement, License Order, Services Order, and/or other governing documents between IPsoft and Customer that control the relationship between IPsoft and Customer and set forth the terms regarding Customer's access to the Hosted Services. The parties intend that this SLA prevails over any conflicting language in an Agreement unless such Agreement explicitly states that it overrides this SLA.
- iii. "Authorized User" means each of the individuals authorized to use the Services pursuant to the terms and conditions of the Agreement.
- iv. "Available" means the Hosted Services are available for access and use by Customer and its Authorized Users and operating in material accordance with the Specifications.
- v. "Exception Unavailability" means the time (in minutes) during which the Hosted Services were not Available, but such time period was subject to an Exception.
- vi. "Hosted Service(s)" means Services delivered in accordance with the Specifications and terms and conditions hereof, including to host, manage, operate and maintain the Service Software for remote electronic access and use by Customer and its Authorized Users.
- vii. "Percentage Uptime," means, for purposes of the calculation of Service Credits,  $Actual\ Uptime \div (Scheduled\ Uptime - Total\ Time\ (in\ minutes)\ of\ Exception\ Unavailability) \times 100$ , expressed as a percentage (i.e., 99.5%).
- viii. "Scheduled Downtime" includes, but is not limited to, any period where IPsoft and Customer have understood that the Hosted Services shall not be Available, such as routine maintenance windows, timely communicated maintenance, or other agreed-upon periods of unavailability.
- ix. "Scheduled Uptime" means the total uptime possible in a month minus any Scheduled Downtime.
- x. "Service(s)" means the services described in the Order(s). If this Schedule A applies, Product (as referred to in the IPsoft Maintenance Schedule) is understood to be the Services.
- xi. "Service Level Failure" means a material failure of the Hosted Services to meet the Availability Requirement.
- xii. "Specification" means the specifications for the Services set forth in the Documentation.

B. **Service Levels and Credits.**

- a. Service Levels. Subject to the terms and conditions set forth in the applicable Agreement(s), IPsoft will use commercially reasonable efforts to make the Hosted Services Available at least ninety-nine and one half percent (99.5%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a "**Service Period**") (the "**Availability Requirement**"), excluding unavailability as a result of any of the Exceptions described below in this Section C.

The Availability Requirement does not apply to any unavailability, suspension, or termination of the Hosted Services, or any other IPsoft or Hosted Services performance issues: (i) caused by factors outside of our reasonable control, including, without limitation, any force majeure event or Internet access or related problems beyond the demarcation point of the Hosted Services; (ii) that result from any actions or inactions of Customer or any third party; (iii) that result from Customer equipment, software, or other technology and/or third-party equipment, software, or other technology (other than third-party equipment within IPsoft's direct control); (iv) Scheduled Downtime; or (v) arising from IPsoft's suspension and termination of Customer's right to use Hosted Services in connection with any breach by Customer of the Agreement between Customer and IPsoft or otherwise in accordance with the written contract(s) between IPsoft and Customer (collectively, the "**Exceptions**"). If availability is impacted by factors other than those used in our Percentage Uptime calculation, then we may issue a Service Credit considering such factors at our sole discretion.

- b. In the event of a Service Level Failure, IPsoft shall issue a credit to Customer in the amount of 100% minus the Percentage Uptime multiplied by the of the monthly fees for the Hosted Services due for the Service Period the Service Level Failure occurred (each a "**Service Credit**"), subject to the following: (a) IPsoft has no obligation to issue any Service Credit unless (i) Customer reports the Service Failure to IPsoft immediately on becoming aware of it; and (ii) requests such Service Credit in writing within ten (10) days of the Service Level Failure; and (b) in no event will a Service Level Credit for any Service Period exceed fifteen percent (15%) of the total fees for Hosted Services that would be payable for that Service Period if no Service Level Failure had occurred.
  
- c. Any Service Credit payable to Customer under this Agreement will be issued to Customer in the calendar month following the Service Period in which the Service Level Failure occurred and will be applied only against future fees for Hosted Services otherwise due from Customer. Service Credits will not entitle Customer to any refund or other payment from IPsoft. Customer shall not exercise the rights in this Section C without a reasonable basis or belief that the applicable Service Availability commitment was not satisfied. If Customer believes that IPsoft has failed to achieve its Service Availability commitment in any given month, IPsoft shall, promptly following Customer's request, provide a report that contains true and correct information detailing IPsoft's actual Service Availability performance. Unless otherwise agreed in writing, Customer's sole and exclusive remedy for any unavailability, non-performance, or other failure by IPsoft to provide the Hosted Services is the receipt of a Service Credit (if eligible) in accordance with this SLA.