



SOFTWARE LICENSE AND SUPPORT AGREEMENT

This agreement is between MinionWare LLC, a Texas limited liability company (**MinionWare**) and the customer into this agreement (**Customer**), and is effective as of the date of the last signature below. The MinionWare software, updates, technical documentation and license keys provided to Customer (**Software**) are licensed and are not sold.

1. **SCOPE.** This agreement describes the licensing of the Software and support provided to Customer under an order.
2. **LICENSE.** Subject to the other terms of this agreement, MinionWare grants Customer, under an order, a perpetual non-exclusive, non-transferable license up to the license capacity purchased to:
 - a. Use the Software only in Customer's internal business operations; and
 - b. Make one copy of the Software for archival and backup purposes.
3. **RESTRICTIONS.** Customer may not:
 - a. Transfer, assign, sublicense, rent the Software, create derivative works of the Software, or use it in any type of service provider environment;
 - b. Reverse engineer, decompile, disassemble, or translate the Software; or
 - c. Evaluate the Software for the purpose of competing with MinionWare.

Third party contractors of Customer may use and access the Software under the terms of this agreement, and Customer is responsible for their compliance with the terms of this agreement.

4. **PAYMENT.** Customer will pay all fees due within 30 days of receipt of an invoice, unless otherwise provided on an order, plus applicable sales, use and other similar taxes.
5. **PROPRIETARY RIGHTS AND MUTUAL CONFIDENTIALITY.**
 - a. **Proprietary Rights.** The Software, workflow processes, user interface, designs, technical documentation and other technologies provided by MinionWare as part of the Software are the proprietary property of MinionWare and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with MinionWare and its licensors. The Software is protected by copyright and other intellectual property laws. Customer may not remove any product identification, copyright, trademark or other notice from the Software. MinionWare reserves all rights not expressly granted.
 - b. **Mutual Confidentiality.** Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this agreement.

Confidential Information means all information that is disclosed to the recipient (**Recipient**) by the discloser (**Discloser**), and includes, among other things:

- any and all information relating to products or services provided by a Discloser, software code, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts;
- as to MinionWare the Software and the terms of this agreement, including without limitation, all pricing information.

Confidential Information excludes information that:

- was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser;
- is or becomes a matter of public knowledge through no fault of Recipient;
- is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or
- is independently developed by or for Recipient without use or access to the Confidential Information.

Recipient may disclose Confidential Information if required by law, but it will attempt to provide notice to the Discloser in advance so it may seek a protective order. Each party acknowledges that any misuse of the other party's Confidential Information may cause irreparable harm for which there is no adequate remedy at law. Either party may seek immediate injunctive relief in such event.

6. **WARRANTY, REMEDY and DISCLAIMER.** For new license purchases, MinionWare warrants that the Software will perform in substantial accordance with its accompanying technical documentation for a period of 90 days from the date of the order. This warranty will not apply to any problems caused by software not licensed to Customer by MinionWare, use other than in accordance with the technical documentation, or misuse of the Software. The warranty only covers problems reported to MinionWare during the warranty period or 30 days after. Customer will cooperate with MinionWare in resolving any warranty claim.
 - A. **EXCLUSIVE REMEDY AND SOLE LIABILITY.** MinionWare will use commercially reasonable efforts to remedy covered warranty claims within a reasonable period of time or replace the Software, or if MinionWare cannot do so it will terminate the license and refund to Customer the license fee paid. **THIS REMEDY IS CUSTOMER'S EXCLUSIVE REMEDY, AND MINIONWARE'S SOLE LIABILITY FOR THESE WARRANTY CLAIMS.**

- B. DISCLAIMER OF WARRANTIES. MINIONWARE DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER UNDERSTANDS THAT THE SOFTWARE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.**
7. **TERMINATION.** This agreement expires at the end of the license period specified in the accompanying order. Either party may terminate this agreement upon a material breach of the other party after a 30 days notice/cure period, if the breach is not cured during such time period. Upon termination of this agreement or a license, Customer must discontinue using the Software, de-install and destroy or return the Software and all copies, within 5 days. Upon MinionWare's request, Customer will provide written certification of such compliance.
8. **ANNUAL SUPPORT.** MinionWare's annual technical support and maintenance services (**Support**) may be purchased under an order. Support is provided under the Support policies then in effect. MinionWare may change its Support terms, but Support will not materially degrade during any Support term. More details on Support are located at <http://minionware.net/wp-content/uploads/MinionEnterpriseSupportTerms.pdf>, which is incorporated into this agreement for all purposes. The Software may connect remotely to MinionWare's servers for transmission of log files for license compliance purposes.
9. **LIMIT ON LIABILITY.** There may be situations in which (as a result of material breach or other liability) Customer is entitled to make a claim against MinionWare. In each situation (regardless of the form of the legal action (e.g. contract or tort claims)), MinionWare is not responsible for any damage and does not have any liability beyond the greater of the amount paid or payable by Customer to MinionWare within the 12 months prior to the event that gave rise to the claim. Even if it knows of the possibility of such damage or liability, in no circumstance is MinionWare responsible for any: loss of, or damage to, data or information; lost profits, revenue, or productivity; or other special, consequential, incidental or indirect damages.
10. **DEFENSE OF THIRD PARTY CLAIMS.** MinionWare will defend or settle any third party claim against Customer to the extent that such claim alleges that the Software violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies MinionWare of the claim in writing, cooperates with MinionWare in the defense, and allows MinionWare to solely control the defense or settlement of the claim. **Costs.** MinionWare will pay infringement claim defense costs incurred as part of its obligations above, and MinionWare negotiated settlement amounts, and court awarded damages. **Process.** If such a claim appears likely, then MinionWare may modify the Software, procure the necessary rights, or replace it with the functional equivalent. If MinionWare determines that none of these are reasonably available, then MinionWare may terminate the Software and refund (as applicable) any prepaid and unused fees service fees and the license fee for perpetual licenses (amortized over a 5-year period from the date of the order). **Exclusions.** MinionWare has no obligation for any claim arising from: MinionWare's compliance with Customer's specifications; A combination of the Software with other technology or processes where the infringement would not occur but for the combination; or Technology or processes not provided by MinionWare. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND MIDNIGHTSQL'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
11. **GOVERNING LAW AND EXCLUSIVE FORUM.** This agreement is governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Dallas County, TX, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in litigation is entitled to recover its attorneys' fees and costs from the other party.
12. **OTHER TERMS.**
- Entire Agreement.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding.
 - Non-Assignment.** Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement and all orders may be assigned, without the consent of the other party, as part of a merger, or sale of all or substantially all of the business or assets, of a party.
 - Independent Contractors.** The parties are independent contractors with respect to each other.
 - Enforceability.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect.
 - Survival of Terms and Force Majeure.** All terms that by their nature survive termination of this agreement for each party to receive the benefits and protections of this agreement, will survive. Neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.
 - Compliance Audit.** No more than once in any 12-month period and upon at least 30 days advance notice, MinionWare (or its representative) may audit Customer's usage of the Software at any Customer facility. Customer will cooperate with such audit. Customer agrees to pay within 30 days of written notification any fees applicable to Customer's use of the Software in excess of the license.
 - Modification Only in Writing.** No modification or waiver of any term of this agreement is effective unless signed by both parties.
 - Export Compliance.** Customer must comply with all applicable export control laws of the United States, foreign jurisdictions and other applicable laws and regulations.
 - US GOVERNMENT Restricted Rights.** If Customer is a United States government agency or acquired the license to the Software hereunder pursuant to a government contract or with government funds, then as defined in FAR §2.101, DFAR §252.227-7014(a)(1) and DFAR §252.227-7014(a)(5) or otherwise, all Software provided in connection with this agreement are "commercial items," "commercial computer software" and/or "commercial computer software documentation." Consistent with DFAR §227.7202 and FAR §12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the United States government

is governed solely by the terms of this agreement and is prohibited except to the extent expressly permitted by the terms of this agreement.

- j. **No PO Terms.** MinionWare rejects additional or conflicting terms of a Customer's form-purchasing document.

_____ (Customer)	MinionWare LLC
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:
Address:	Address: