

## C&S's Standard Terms and Conditions for Support & Maintenance

1. In consideration for the Maintenance Fees paid by the Licensee, C&S will use commercially reasonable efforts to provide the technical account management support and maintenance services ("Support Services") set forth herein below for the Product properly licensed.

2. **Definitions** : Unless otherwise defined herein, all capitalized terms shall have the meaning set forth herein or in the Maintenance Agreement.

"Authorized Contact Person" means the Licensee individual designated in the table above. The individual may be changed upon written notice by Licensee to C&S.

"Business Day" means a business day, which shall exclude weekends and C&S's holidays

"Developer" shall mean respective owner of the Product who has all the intelligent property rights of the Product.

"Error" means a verifiable and reproducible software problem or user documentation error, which causes a failure of unmodified Product to operate substantially in accordance with its end user documentation.

"Error Correction" means the use of commercially reasonable efforts to correct Errors using a Patch or Workaround.

"Licensee" shall mean the end user who is a party to the Maintenance Agreement and who has been granted a license to use the Product.

"Maintenance Agreement" shall mean the agreement executed between C&S and the Licensee for maintenance of the Product.

"Patch" means the repair or replacement code patch for the Product to remedy an Error.

"Product" means the ThinkTank learning management system.

"Severity 1 Error" means an Error for which there is no apparent Workaround which renders the Product unusable, makes the continued use of one or more critical functions in the Product impossible or severely restricted, and/or severely puts at risk critical business operations.

"Severity 2 Error" means an Error which severely affects or restricts major functionality in the Product. The Error is of a time sensitive nature and important to long-term productivity but is not causing an immediate work stoppage. No Workaround is available and production operations can continue in a restricted fashion.

"Severity 3 Error" means an Error which consists of either a minor problem that does not have a major affect on production operations or a major problem for which a reasonably acceptable Workaround exists.

"Severity 4 Error" means an Error which consists of a minor condition or end user documentation problem that has no significant effect on production operations. An example is requests for new features.

"Customer Relations Manager" means the C&S point of contact designated for all Product problems and technical account issues.

"Workaround" means a modification or Patch of the Product or a reasonable change in the procedures followed or data supplied by Licensee, which may be of a temporary or interim nature, to help avoid an Error without substantially impairing Licensee's use of the Product.

3. **Technical Support** : During the term of the Maintenance Agreement, C&S shall provide a Customer Relations Manager who shall be generally available Monday through Friday during the Business Day hours of 9:30 a.m. to 6:00 p.m. ("Regular Hours"), to answer questions by Licensee concerning Product Errors within the scope stated herein or other customer service questions regarding use and operation of the Product. C&S shall make available a general telephonic contact or monitored voice mail or email response services for any such Customer Relations Manager.

4. **End User Support.** Licensee shall be responsible for all support of its employees not trained to use the Product, consultants, contractors, customers or other third parties, including without limitation, installation of the Product, system tests, end user difficulties with the Product, end user training, etc. Prior to contacting C&S with any end user problems, Licensee shall isolate the problem to the Product, eliminate other factors as potential causes of the problem (such as Licensee's firewall) and shall be responsible for providing sufficient information and data to allow C&S to readily reproduce all reported end user-related Errors

5. **Updates.** During the term of the Maintenance Agreement, Licensee shall be entitled to receive updates, if any, which Developer makes generally available to its customers under the effective Maintenance Agreements. It would however not include any field customization and field enhancement required by the Licensee.

6. **Response.** C&S agrees to use reasonable efforts to acknowledge software Errors reported and provide Error Corrections according to the following table. While the target times for Error Corrections set forth in the table below are achievable based on the experience of Developer in providing Error Corrections, the parties acknowledge that the unique nature of software does not lend itself to easily ascertainable predictions for Error Corrections in every case, and C&S does not warrant that Error Corrections will be provided in accordance with this schedule in every case. In addition, in some cases the Product may not conform to end user documentation because of an end user documentation error, rather than a Product error, in which case C&S shall provide Licensee with corrected documentation.

Severity Level*	Response Time**	Problem Relief – Target times
Severity 1 (Critical)	One Business Day	C&S shall promptly commence the following procedures: (i) assign personnel to investigate the Error; (ii) notify Developer that such Error has been reported and of steps being taken to correct such Error; (iii) provide Licensee with periodic reports on the status of the investigation; and (iv) initiate work during Regular Hours to reduce the Error to a Severity 2 Error and/or provide Licensee with an Error Correction and should a Patch be required, provide such Error Correction as part of a Patch within twenty (20) Business Days.
Severity 2 (Serious)	Two Business Days	C&S shall exercise commercially reasonable efforts during Regular Hours to provide an Error Correction, and should a Patch be required, include the Error Correction for the Error in the then-next available (i.e., not already subject to code freeze) regular Product update or within thirty (30) Business Days, whichever is earlier.
Severity 3 (Minor)	Four Business Days	C&S shall exercise commercially reasonable efforts during Regular Hours to provide an Error Correction, and after obtaining an Error Correction, include the Error Correction in the then-next available (i.e., not already subject to code freeze) Product update version or within sixty (60) Business Days, whichever is earlier.
Severity 4 (Low)	Ten Business Days	C&S will receive and log the report to the Developer. If the Error is a feature enhancement C&S / Developer is under no obligation to incorporate such requests in future updates. If the Error is a minor condition or Documentation problem, C&S shall exercise commercially reasonable efforts to provide an Error Correction in a future Update on an as available basis.

\*Severity Level of an error will be determined by the Developer

\*\*Response Time means support person response time by Email, Phone or Fax

7. **Responsibilities :** C&S / Developer shall only be obligated to support the then current production update of the Product and the immediately preceding update released up to twelve (12) months prior to the most recent update becoming generally available. Licensee shall be responsible for: (i) providing sufficient information to C&S for C&S to duplicate the circumstances indicating a reported Product defect or Error; (ii) using the currently-supported versions of the Product, including Error corrections, after release by C&S / Developer of any Error Corrections or Updates, if such current version corrects the Error in question; (iii) promptly paying all maintenance fees and other amounts payable hereunder; (iv) providing all reasonable cooperation to C&S with respect to C&S’s furnishing of maintenance and support hereunder; and (v) providing all communications in the English language, including the reporting of any Errors, or at Licensee’s option, in Licensee’s native language; provided however, Licensee shall be solely responsible for any translation expenses.

**8. Others :**

8.1 Any obligations of C&S to perform any services outside the scope of the Maintenance Agreement or to provide training shall required a separate agreement signed by both parties.

8.2 Licensee shall comply with all statutory obligations that it is required to be complied with for it’s part of obligation and to that extent indemnify C&S and/or the Developer. The Licensee shall furnish to C&S such documentation and access to its facilities and records as C&S may request from time to time in order to verify compliance with the provisions of the Maintenance Agreement.

8.3 Except for the express warranties set out above, and without prejudice to any statutory rights which the Licensee may have, no other warranties or conditions whether expressed or implied, statutory or otherwise, including without limitation those relating to merchantability or fitness for a particular purpose, are made by C&S and all such warranties are hereby expressly excluded to the extent permitted by law.

8.4 Notwithstanding anything to the contrary, in no event shall C&S be liable to licensee or any other party for any indirect, consequential, special, criminal, punitive or exemplary loss, damage or liability arising directly or indirectly out of or related to the Maintenance Agreement, whether in contract, tort for breach of statutory duty or otherwise. C&S's liability arising directly or indirectly out of the Maintenance Agreement whether in contract tort, for breach of statutory duty or otherwise shall be limited to the amount of all sums received by C&S from the licensee pursuant to the Maintenance Agreement during the initial or renewal term of the Maintenance Agreement during which such liability arose.

8.5 Licensee may upon C&S's prior written consent assign the Maintenance Agreement only if Licensee complies with C&S's then prevailing policies respecting assignment of licenses, which includes a requirement that the scope of the use of the product not be expanded beyond that provided herein. C&S may assign the Maintenance Agreement to any third party that succeeds to C&S's interests in the Product and assumes the obligations of C&S hereunder, and C&S may assign its right to payment in the Maintenance Agreement or grant a security interest in the Maintenance Agreement or such payment right to any third party.

8.6 If Licensee breaches any term of the Maintenance Agreement or if Licensee becomes insolvent or if bankruptcy or receivership proceedings are initiated by or against Licensee, C&S shall have the right to withhold its own performance hereunder and/or to terminate the Maintenance Agreement immediately and, in addition to all other rights of C&S, all amount due or to become due hereunder will immediately be due and payable to C&S.

8.7 If Licensee fails to pay the applicable Maintenance Fees, then licensee may reinstate maintenance thereafter by paying to C&S a fee equal to 150% of C&S's then prevailing Maintenance Fees for each year for which the Maintenance Fees has not been paid.

8.8 The Maintenance Agreement represents the entire agreement between C&S and Licensee with respect to the maintenance, and all other agreements, proposals, purchase order representations and/or other understandings concerning the maintenance, whether oral or written between the parties are superseded in their entirety by the Maintenance Agreement. No alteration or modifications of the Maintenance Agreement will be valid unless made in writing and signed by the parties.

8.9 The Maintenance Agreement shall be governed by the laws of India and the parties hereto submit to the exclusive jurisdiction of the Courts of India. Any delay or failure by either party in exercising any right arising under the Maintenance Agreement shall not constitute a waiver of such rights. The Maintenance Agreements does not, and is not intended to confer any benefits on, nor create any right exercisable or enforceable by any third party. If any provision of the Maintenance Agreement is held to be unenforceable, the Maintenance Agreement shall be construed without such provision. Any dispute arising out of the Maintenance Agreement shall be settled through arbitration in accordance with The Arbitration & Conciliation Act, 1996. The Parties are independent contractors and the Maintenance Agreement is not intended to create any partnership, joint venture, agency or other similar relationship. All terms in the Maintenance Agreement that have been initially capitalized shall for the purpose of the Maintenance Agreement have the meaning as set out herein. The Maintenance Agreement is effective only after the Maintenance Fees are received and realized by C&S and after it is signed by the representatives of both the Parties.

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