

# Support and Subscription Services Terms and Conditions

Heimdall Data, Inc., a Delaware corporation, (“**Heimdall Data**”), shall provide Technical Support and Subscription Services (as defined herein) (collectively, the “**Services**”) to the Customer, per the terms of this Agreement (the “**Agreement**”). The **Effective Date** and **Software** will be set forth on the applicable license agreement, Heimdall Data quotation or invoice. **Heimdall Data, Inc. may change or modify Support Terms and Conditions at any time with or without notice.**

## 1.0 Definitions.

**1.1 “Error”** means a failure in the Software 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 Heimdall Data for production deployment or use. Modified Code excludes customizable Software options for which Heimdall Data offers Services on the applicable Heimdall Data price list.

**1.3 “Services Fees”** means the fees for Services specified in a corresponding Heimdall Data 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: (a) for Software Licenses for which Services are mandatory, on the date the applicable Software License Key(s) are made available for download, and (b) for Software Licenses for which Services are optional, on the date of purchase of the Services.

**1.5 “Severity”** is a measure of the relative impact an Error has on the use of the Software, as determined by Heimdall Data. The following Severity levels apply to all Software:

(a) “**Severity One**” means an error that renders the Software inoperative or causes catastrophic failure in a production environment.

(b) “**Severity Two**” means an error that significantly degrades performance of the Software or materially restricts Customer’s use of the functionality of the Software.

(c) “**Severity Three**” means an error that causes only a minor impact on Customer’s use of the Software.

(d) “**Severity Four**” means (i) general usage questions and cosmetic issues, including errors in the Documentation, and (ii) cases opened via email only.

**1.6 “Software”** means software offered on the Heimdall Data price list, and all components shipped with the Software, including Open Source components.

**1.7 “Subscription Services”** means the provision of Maintenance Releases, Minor Releases and Major Releases (each defined below), if any, to the Software, as well as corresponding Documentation, to Customer.

(a) **“Maintenance Release”** or **“Update”** means a generally available release of the Software that typically provides maintenance corrections or fixes only, designated by Heimdall Data by means of a change in the digit to the right of the second decimal point (e.g. Software 5.0 >> Software 5.0.1) or, for certain Software, by means of a change in the digit of the Update number (e.g. Software 5.0 Update 1).

(b) **“Minor Release”** means a generally available release of the Software that (i) introduces a limited amount of new features and functionality, and (ii) is designated by Heimdall Data by means of a change in the digit to the right of the decimal point (e.g., Software 5.0>>Software 5.1).

(c) **“Major Release”** means a generally available release of the Software that (i) contains functional enhancements or extensions, and (ii) is designated by Heimdall Data by means of a change in the digit to the left of the first decimal point (e.g., Software 5.0 >> Software 6.0).

**1.8 “Technical Support”** means the provision of telephone or web-based technical assistance by Heimdall Data to Customer’s technical contact(s) with respect to installation and Errors, at the corresponding Services level purchased by Customer.

**1.9 “Third Party Products”** means any software or hardware that (i) is manufactured by a party other than Heimdall Data and (ii) has not been incorporated into the Software.

## **2.0 Service Terms.**

**2.1 Provision of Services.** Subject to the terms of this Agreement, Heimdall Data shall, during the Services Period, provide Customer with Services at the applicable Services level purchased.

**2.2 End of Availability.** Heimdall Data may, at its discretion, decide to retire Software and/or Services from time to time (**“End of Availability”**). Heimdall Data shall post notice of End of Availability, including the last date of general commercial availability of the affected. Heimdall Data shall have no obligation to provide Services for Software that is outside of the applicable Services life.

## **2.3 Purchase Requirements.**

(a) Except as otherwise provided by Heimdall Data, Customer must purchase initial Services only for the most current, generally available release of the Software.

**(b)** Customer must purchase and/or renew Services at the same Services level for all of the Software in a given environment (e.g., Test, Development, QA, and Production).

**(c)** Except as otherwise provided in the applicable price list, the minimum term for any Services offering is one (1) year.

**(d)** These Services Terms and Conditions will automatically update to Heimdall Data's then-current Services terms and conditions set forth in this and future versions of this agreement upon any renewal of Services.

## **2.4 Exclusions.**

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

(i) accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by Heimdall Data; operation of the Software with other media not in accordance with the manufacturer's specifications; or causes other than ordinary use;

(ii) improper installation by Customer or use of the Software that deviates from any operating procedures as specified in the Documentation;

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

(iv) Modified Code;

(v) issues relating to Software offered as a Service ("SaaS");

(vi) any customized deliverables created by Heimdall Data specifically for Customer as part of consulting services; or

(viii) use of the Software with unsupported tools (e.g., Java Development Kit (JDK); Java Runtime Environment (JRE)), APIs, interfaces or data formats other than those included with the Software and supported as set forth in the Documentation; or

(vii) any issue not covered by Technical Support.

Customer may request assistance from Heimdall Data for such problems, for an additional fee.

**(b)** If Heimdall Data suspects that a reported problem may be related to Modified Code, Heimdall Data, 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 Heimdall Data's consulting services group for an additional fee.

**2.5 Customer Responsibilities.** Heimdall Data's obligations regarding Services are subject to the following:

(a) Customer agrees to receive from Heimdall Data communications regarding Services via e-mail, telephone, and other formats (such as communications concerning support coverage, Errors or other technical issues and the availability of new releases of the Software).

(b) Customer's technical contact shall cooperate to enable Heimdall Data to deliver the Services.

(c) Customer is solely responsible for the use of the Software by its personnel and shall properly train its personnel in the use and application of the Software.

(d) Customer shall promptly report to Heimdall Data all problems with the Software, and shall implement any corrective procedures provided by Heimdall Data reasonably promptly upon receipt of such request.

(e) Customer is solely responsible for protecting and backing up the data and information stored on the computers on which the Software is used, 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 Heimdall Data for Technical Support. Heimdall Data is not responsible for lost data or information in the event of errors or other malfunction of the Software or computers on which the Software is used.

(f) Customers who have purchased Enterprise support will have email support. Emails must be sent to [support@heimdalldata.com](mailto:support@heimdalldata.com) or via our [Support web portal](#).

### **3.0 Services Offerings and Fees.**

#### **3.1 Services Fee Terms.**

(a) Services Fees are payable on the Effective Date or, in the case of a renewal term, no later than the date of commencement of the applicable Services Period. Services Fees are non-refundable.

(b) If Customer renews or adds a Services offering that has a minimum term of one (1) year, Customer may elect to make Services for all or a portion of its Software licenses coterminous with the renewed or added Services. In such case, Heimdall Data will prorate the applicable Services Fees to extend the current Services Period to make it coterminous with such renewed or added Services.

(c) Provided that Customer is enrolled in Support at the time, Customer may renew Services upon payment of the applicable fees. Services are only available for Customers who are current on Support (and for Customers with existing Services who continue to renew). If Customer fails to order Services within the applicable payment period, then for one year after Service termination, Heimdall Data has the option to reinstate with associated penalty fees.

**(d) Customers who are current on basic support and maintenance will receive** support between the hours of 9am and 5pm, Monday – Friday Eastern (New York) time. Issues reported during business hours shall be responded by best effort. Email must be sent to [support@heimdalldata.com](mailto:support@heimdalldata.com) or via our [Support web portal](#).

**(e) Case Management:** Heimdall Data will use commercially reasonable efforts to manage the Support Case and address Customer's problem according to severity level. Heimdall Data defines severity level for every Case. Customer must provide Heimdall Data with timely responses and any information that might reasonably be needed to address the problem. All Cases resolved by Support wait for Customer's confirmation. If a Case is not closed within 15 days after resolution, it gets automatically closed with corresponding notification to Customer.

**(f) Maintenance:** Customers who purchases and are current on maintenance and support shall have available to them Updates, Minor, and Major releases of software.

#### **4.0 Miscellaneous Terms.**

**4.1 Payment Terms.** Services Fees are exclusive of any taxes, duties, or similar charges imposed by any government. Customer shall pay or reimburse Heimdall Data 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 Heimdall Data). All invoices issued hereunder by Heimdall Data are due and payable prior to expiration of Services Period. If payment of any Services Fee is overdue, Heimdall Data may also suspend performance until such delinquency is corrected.

**4.2 Limited Warranty.** Heimdall Data warrants that the Services to be performed hereunder will be done in a workmanlike manner and shall conform to industry standards. Upon Customer providing Heimdall Data with a reasonably detailed written notice to cure within thirty (30) days of occurrence of the nonconformance, Heimdall Data 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 PERMITTED BY LAW, THIS REMEDY WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCONFORMANCE OF SERVICES.

**4.3 Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, HEIMDALL DATA 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. HEIMDALL DATA'S LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE SERVICES FEES PAID BY CUSTOMER TO HEIMDALL DATA UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT MOST DIRECTLY GIVING RISE TO THE CLAIM.

**4.4 Termination.** Heimdall Data may terminate this Agreement and all Services at any time if (1) it is discovered that Customer is currently in breach of its Software license restrictions, pursuant to Customer's Software license or (2) Customer is in material breach of this Agreement. Termination will become effective automatically and without further notice unless Customer cures the breach within thirty days (30) days after the giving of such notice.

**4.5 Data Protection.** 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 Heimdall Data.

**4.6 Other.** Customer may not assign or delegate this Agreement to any third party without the prior written consent of Heimdall Data. This Agreement shall be governed by the laws of the State of California without regard to its 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 Heimdall Data 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 is hereby rejected by Heimdall Data. Customer agrees that purchase orders do not have to be signed to be valid and enforceable. 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. Heimdall Data may update the Technical Support Guide and support policies periodically, without prior notice.

## **5.0 Service Level Agreement**

Heimdall Data technical support provides response times depending on the urgency of your issue. For Technical Relationship Management (TRM) customers, we may provide additional updates on issues opened with Heimdall Data technical support.

Due to dependencies on the nature of the reported problem and variables in customer operating environments, we do not guarantee resolution times.

Below are estimated technical support response times for customers with an Enterprise and or TRM support service contract.

#### Severity 1:

Your production use of supported product is not functioning and your operation is so severely impacted. The operation is mission critical and the situation is an emergency. There is no viable workaround to the problem.

Severity 1	Enterprise Support Services	Technical Support Services with TRM
Contact medium	Phone or Web	Phone or Web
Response time	2 hours	1 hour
On-going customer communication	Every day until the situation stabilized.	

#### Severity 2

There is a severe loss of service within the supported product. The operation continues to function, but in less optimal state.

Severity 2	Enterprise Software Services	Technical Support Services with TRM
Contact medium	Web	Web
Response time	6 hours	3 hours
On-going customer communication	Updates every 2 business days until situation stabilized	

#### Severity 3

There is a partial, non-critical loss in the functionality of the supported product.

Severity 3	Enterprise Support Services	Technical Support Services with TRM
Contact medium	Web	Web
Response time	24 hours	24 hours
Ongoing customer communication	Updates every 5 business days until resolution (or date for final fix).	

Severity 4

There are general product usage questions or cosmetic issues not impairing users.

Severity 4	Enterprise Support Services	Technical Support Services with TRM
Contact medium	Web	Web
Response time	5 days	5 days
Ongoing customer communication	Bi-weekly updates until resolution (or date for resolution) provided to customer.	