

# Terms for Maintenance and Support Services

by

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hereinafter referred to as „IGEL“.

## 1 Definitions

For the purposes of these Terms

- 1.1 “IGEL-Software” means the Software-Products “IGEL Workspace Edition” (including “IGEL OS” and the features of “Universal Management Suite” (“IGEL UMS”) included therein) as well as the expansion package “IGEL Enterprise Management Pack” (“IGEL EMP”), if acquired by the Customer.
- 1.2 “Third-Party Software” means Software not manufactured by IGEL that is either implemented in IGEL-Software or provided together with IGEL-Software to Customers, whereas software that is installed or stored on the “Custom Partition” shall not be deemed as Third-Party Software and shall be excluded from Maintenance and Support Services on the basis of these Terms. Custom Partition is a feature of IGEL OS that allows the Customer to install software provided by third parties to a mass storage’s partition.
- 1.3 “Customer” means a customer of an IGEL-Reseller that has an active license for IGEL-Software and additionally requests an IGEL-Reseller to provide Maintenance and Support Services in accordance with these Terms.
- 1.4 “Endpoint Device” means computers or other hardware devices with an installed, licensed IGEL OS.
- 1.5 “Business Hours” means, for Customers located in Europe, any time between 08:00 a.m. and 6:00 p.m. (CET) on Workdays in Germany. For Customers located outside of Europe any time between 08:00 a.m. and 08:00 p.m. (EST) on Workdays in the USA.
- 1.6 „Workdays in Germany“ means any days from Monday to Friday except national holidays in Germany.
- 1.7 “Workdays in the USA” means any days from Monday to Friday except the following holidays in the USA: New Year’s Day, Martin Luther King Day, President’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Black Friday, Christmas Eve and Christmas Day.
- 1.8 “Error” means a circumstance under which the IGEL-Software does not have the agreed quality. To the extent that the quality has not been agreed, a circumstance under which the IGEL-Software is not suitable for the use intended under the respective purchase contract or the IGEL-Software is not suitable for the customary use and its

quality is not usual in things of the same kind and the purchaser may expect this quality in view of the type of the thing.

- 1.9 “**Critical Error**” means Errors due to which essential functions of the IGEL-Software are not available and/or considerably restrict the Customer’s course of business (e.g. imminent data loss or loss of connection to a centralized server environment), if and as far as there is no reasonable workaround for these effects. IGEL and the Customer shall mutually determine whether a Critical Error is given.
- 1.10 “**Major Version**” means the versions of IGEL-Software marked by the same number before the first decimal point of a version number (e.g. 11.x.x. is Major Version 11).
- 1.11 “**End of Maintenance**” means IGEL-Software for which, according to the information provided via <https://kb.igel.com/EOM>, no Maintenance and Support Services are no longer being provided. Maintenance and Support Services are regularly provided for the Major Versions released by IGEL to Customers during the last 3 (three) years at least.

## 2 General Information, Contractual and Actual Service Relationship

- 2.1 IGEL-Resellers shall be entitled to offer Maintenance and Support Services for IGEL-Software to Customers in their own name and for their own account and to conclude separate agreements with Customers for this purpose (hereinafter referred to as “**M&S-Customer-Agreements**”). Contractual parties of such agreements are solely IGEL-Reseller and the Customer.
- 2.2 IGEL offers IGEL-Resellers, by intermediary of an IGEL-Distributor, assistance regarding the IGEL-Resellers’ obligations to Customers arising out of M&S-Customer-Agreements by effectively taking over certain Maintenance and Support Services (hereinafter referred to as “**M&S-Services**”) in accordance with these Terms. Such assistance requires a separate order issued via an IGEL-Distributor to IGEL by an IGEL-Reseller regarding the M&S-Services (hereinafter referred to as a “**M&S-Service-Order**”).
- 2.3 In the context of M&S-Service-Agreements IGEL solely acts as an agent (*Erfüllungsgehilfe*) for IGEL-Resellers. IGEL shall be entitled to provide the M&S-Services directly to Customers and Customers shall be entitled to receive M&S-Services directly from IGEL. IGEL-Resellers shall not be entitled to act as representatives of or on behalf of IGEL. IGEL shall not be obliged to provide further M&S-Services than individually agreed on in a M&S-Service-Order.
- 2.4 IGEL-Resellers shall not be restricted with regard to the conclusion of their M&S-Customer-Agreements. This applies especially to the scope of services as well as the remuneration owed by the Customer.
- 2.5 Notwithstanding sec. 2.4, each IGEL-Reseller shall conclude a M&S-Customer-Agreement with each Customer upon his first purchase of a Delivery-Token for IGEL-Software, which includes services corresponding to the M&S-Service-Package “Maintenance (including Select Support)”. This “**M&S-Base-Agreement**” forms an inseparable package together with the corresponding Delivery-Token and is already taken into account regarding the package’s price. Therefore, IGEL-Resellers shall not

charge an additional remuneration for the conclusion of M&S-Base-Agreements as well as the services performed thereunder beyond the package's price.

- 2.6 Notwithstanding sec. 10.1, IGEL-Resellers shall not owe any additional remuneration beyond the package's price for the conclusion of M&S-Base-Agreements to the IGEL-Distributor via which the IGEL-Reseller receives M&S-Services from IGEL.

### 3 M&S-Service-Packages

- 3.1 IGEL shall be entitled to change the areas in which M&S-Services are offered subject to its sole discretion and offers assistance to IGEL-Resellers on the basis of the following "M&S-Service-Packages", each with the scope of services as respectively described:

#### 3.2 "Maintenance (including Select Support)"

- Product Updates & Upgrades according to sec. 4.1.1,
- Web-Based Support according to sec. 4.1.2,
- Named Contacts according to sec. 5: 5 employees,
- Reaction Times according to sec. 4.1.5,
- License Portability according to sec. 4.1.6,
- Unlimited number of support cases.

"Maintenance (including Select Support)" is available for Customers regardless of their location.

#### 3.3 "Priority Support"

"Priority Support" is only available for Customers located in Europe or North America. The same scope of services as in "Maintenance (including Select Support)" and additionally/deviating:

- Support by Phone according to sec. 4.1.3,
- Support via Remote Access according to sec. 4.1.4,
- Named Contacts according to sec. 5: 10 employees,
- Reaction Times according to sec. 4.1.5: 1 Workday in Germany / the USA.

#### 3.4 "Priority Plus Support"

"Priority Plus Support" is only available for Customers located in Europe or North America. The same scope of services as in "Priority Support" and additionally/deviating:

- Support via Remote Access outside of Business Hours according to sec. 4.1.4.
- Named Contacts according to sec. 5: 15 employees.
- Reaction Times according to sec. 4.1.5: 4 Hours.

- 3.5 M&S-Service-Orders can only be concluded with a consistent scope of services in accordance with one of the M&S-Service-Packages for each IGEL-Software and Third-Party Software per Customer.

- 3.6 The M&S-Service-Packages “Priority Support” and “Priority Plus Support” require a valid M&S-Service-Order with the scope of services of “Maintenance (including Select Support)” Package at the time of concluding a M&S-Service-Order, given that “Select Support” provides the necessary basis for the enhanced functions of said M&S-Service-Packages.
- 3.7 Any M&S-Service-Order covering “Priority Support” or “Priority Plus Support” that is concluded after the conclusion of a M&S-Service-Order covering “Maintenance (including Select Support)” has no effect on the latter order’s duration, causing the M&S-Services according to sec. 4.1.1 and 4.1.6 to become unavailable upon expiration of the M&S-Service-Order covering “Maintenance (including Select Support)”, regardless of a M&S-Service-Order covering “Priority Support” or “Priority Plus Support” being in effect for a longer duration.

## 4 M&S-Services

- 4.1 Regardless of the choice of a certain M&S-Service-Package (the individual scope of services may, however, differ in accordance with that choice) the following shall apply to M&S-Services performed by IGEL:

4.1.1 Product Updates & Upgrades:

Subject to its sole discretion, IGEL will release new versions of IGEL-Software (as so called “Major Versions” and “Release Versions”). If and as far as IGEL presents the prospect of new versions in the context of “Roadmaps” or comparable advertising material, such prospect shall only be a non-committal announcement. IGEL furthermore provides Customers with “Stable-Releases” and/or “Private-Builds” for IGEL-Software that has not yet reached the status End of Maintenance. Private-Builds primarily aim towards the fixing of Errors and Stable-Releases may, in addition to that, contain new functions. If and as far as manufacturers of Third-Party Software release new versions, patches or hotfixes for their software to the general public, IGEL shall only enable the Customers and/or IGEL-Resellers to obtain such releases. IGEL shall expressly not be obliged to release new versions, patches or hotfixes for Third-Party Software. The installation of new versions, Stable-Releases, Private-Builds and/or Third-Party Software shall solely be subject to the Customers’ or IGEL-Resellers’ responsibility.

4.1.2 Web-Based Support:

IGEL provides a “Knowledge Base” for IGEL-Software via internet, based on its sole discretion. In addition to that, Customers can issue “Support-Tickets” online and submit them to IGEL. Web-Based Support shall only be available for Named Contacts according to sec. 5.

4.1.3 Support by Phone:

Support by phone is provided during Business Hours via the corresponding telephone numbers provided and released by IGEL. The subject matter of Support by Phone is the support of Customers regarding the installation of IGEL-Software or Third-Party Software as well as regarding the fixing of Errors, whereas IGEL shall not

owe a specific result of such support. Support by phone shall only be available for Named Contacts according to sec. 5.

#### 4.1.4 Remote Access:

If and as far as deemed reasonable by IGEL and only with the express approval of the Customer concerned (or an authorized representative) in text form, IGEL is entitled to provide support via remote access to the Customer's Endpoint Devices. Such Remote Access will be carried out using a state of the art encryption. To allow Remote Access, the Customer may have to permit it by changing his security settings (e.g. Firewall). Remote Access will be carried out during Business Hours. In case of Critical Errors, Remote Access can be carried out outside of Business Hours, if "Priority Plus Support" has been ordered for the Customer concerned.

#### 4.1.5 Reaction Times:

If "Maintenance (includes Select Support)" has been ordered, M&S-Services will be carried out over the course of 3 (three) Workdays in Germany for Customers located in Europe or 3 (three) Workdays in the USA for Customers located outside of Europe. If "Priority Support" has been ordered, those reaction times are each reduced to 1 (one) Workday in Germany or the USA. If "Priority Plus Support" has been ordered, Reaction Times are 4 (four) hours during Business Hours.

If "Priority Support" has been ordered the Reaction times regarding Critical Errors are reduced to 4 (four) hours during Business Hours if "Priority Plus Support" has been ordered the reaction times are reduced to 2 (two) hours, regardless of the time of day, and requires an Error report via Support by Phone.

The reaction times are considered in compliance as long as IGEL begins to carry out the M&S-Services within the deadlines mentioned.

#### 4.1.6 License Portability:

The Customer is entitled to transfer his License (which is principally bound to a certain Endpoint Device) to another Endpoint Device, if and as far as he ceases to use the unlocked IGEL-Software on the originally bound Endpoint Device (e.g. via uninstalling the IGEL-Software).

#### 4.1.7 Language of Support:

All M&S-Services offered by IGEL are provided in English. Additional languages may be available in individual cases but are not mandatorily included in any M&S-Service.

## 5 **Named Contacts**

5.1 The Customer shall appoint a certain number of employees (depending on the choice of a certain M&S-Services-Package) that act as contact persons and as authorized delegates regarding M&S-Services for the Customer (herein referred to as "**Named Contacts**").

5.2 The Customer shall register user accounts for the Named Contacts on IGEL's "Maintenance and Support" subpage, to enable those Named Contacts to make use of

M&S-Services. Named Contacts can always be exchanged by the Customer as long as the respective maximum number is not exceeded.

- 5.3 IGEL shall only provide M&S-Services towards Named Contacts that are adequately qualified to use and supervise IGEL-Software. In case of doubt regarding the individual qualifications of a Named Contact, IGEL shall inform the IGEL-Reseller and the Named Contact without undue delay.

## 6 Exceptions for M&S-Services

- 6.1 M&S-Services shall only be provided for IGEL-Software and Third-Party Software. However, no M&S-Services shall be provided for IGEL-Software which has been customized, supplemented, altered or modified (especially regarding the IGEL-Software's source code) without IGEL's express consent, if and as far as the Customer does not reverse such changes in a way that the changes cannot reasonably be assumed as origin of an Error or as an impairment of M&S-Services.

- 6.2 Furthermore, excluded from M&S-Services are

- Errors due to outside influences, e.g. power blackouts, actions from outside or force majeure events,
- Errors due to the use of IGEL-Software or Third-Party Software not covered by the regular use according to the respective Software's specifications,
- the operation of IGEL-Software on Endpoint Devices which do not meet the requirements that were published by IGEL on its website at the time IGEL and the IGEL-Reseller concluded the respective M&S-Service-Order, or
- Claims of Customers that are subject to the IGEL hardware-warranty.

## 7 Cooperation Duties of the Customers

- 7.1 IGEL shall only be obliged to provide M&S-Services for IGEL-Resellers and to Customers that, in turn, undertake all cooperative actions necessary for the provision of the respective M&S-Services.

- 7.2 If and as far as M&S-Services are to be provided regardless of the time of day, it is required that the Customer holds sufficient Named Contacts available during the execution of such M&S-Services that are able to duly fulfill the Customer's cooperation duties.

- 7.3 The IGEL-Reseller shall instruct the Customer to backup all data on the Customer's IT-environment that is to be accessed via Remote Access and shall oblige the Customer accordingly, due to the circumstance that a possible data loss may occur during the Remote Access. IGEL shall not be liable for any such loss, neither to the Customer nor to the IGEL-Reseller.

### **8 Changes to M&S-Services**

- 8.1 IGEL shall be entitled, but not obliged, to add further M&S-Services to its offers (e.g. a so-called „Technical Relationship Manager“).
- 8.2 IGEL shall furthermore be entitled to change the offered M&S-Services as well as these Terms with 6 (six) months' notice. Any changes shall be announced on IGEL's website. IGEL-Resellers shall consider the respective changes in their M&S-Customer-Agreements beginning 1 (one) month after the day announcement.

### **9 Ordering M&S-Services**

IGEL-Resellers shall order M&S-Services from IGEL-Distributors, which in turn order the respective M&S-Services from IGEL, in accordance with these Terms through separate M&S-Service-Orders. These Terms shall not be considered as a legally binding offer. M&S-Service-Orders shall only be concluded upon acceptance by IGEL, which can be declared expressly or by commencing with the provision of the M&S-Services ordered towards the Customer. In the latter case, the IGEL-Reseller waives the receipt of a declaration of acceptance.

### **10 Remuneration**

- 10.1 The IGEL-Reseller shall be obliged to pay the agreed upon remuneration for each M&S-Service-Order to the IGEL-Distributor via which the IGEL-Reseller receives the M&S-Services from IGEL. The IGEL-Distributor shall then pay the agreed upon remuneration for each M&S-Services-Order to IGEL.
- 10.2 IGEL regularly accounts for the remuneration after acceptance of a M&S-Service-Order via electronic invoice. However, IGEL reserves the right to change the accounting model. The IGEL-Distributor is free in its choice regarding the accounting model.

### **11 Duration of M&S-Services-Orders, Termination, Upgrade**

- 11.1 M&S-Service-Orders shall be concluded between the parties concerned (between IGEL-Reseller and between IGEL-Distributor and IGEL) for a duration of 1 (one), 3 (three) or 5 (five) years per Customer, based upon the IGEL-Reseller's choice. The right to terminate the M&S-Service-Order at will according to sec. 648 of the German Civil Code shall be waived. The duration of a M&S-Service-Order shall not automatically renew upon expiration but rather require the parties to conclude a new M&S-Service-Order in order to prolong the provision of M&S-Services.
- 11.2 Each Party's right to terminate this agreement with good cause remains unaffected thereof. A good cause is especially, but not limited to, given if
  - the IGEL-Reseller or IGEL-Distributor is in default with a due payment arising out of a M&S-Service-Order for longer than 30 (thirty) days after having been given notice and a reasonable period to cure the respective default

- insolvency or comparable proceedings concerning the assets of the IGEL-Reseller or IGEL-Distributor have been filed or the initiation has been denied for lack of sufficient assets,
- the IGEL-Reseller or the IGEL-Distributor fully or partially and significantly closes its business, with an actual or anticipated duration of more than eight (8) weeks, or
- the contractual basis between the IGEL-Reseller and the IGEL-Distributor, that provides the IGEL-Reseller the status as authorized IGEL-Reseller, ends - regardless of the cause of termination.

11.3 Each notice of termination has to be issued in written form. The written form is also met if sent by telefax, if the notice for termination is received by post not later than one week after the receipt of the telefax. If a notice of termination has been sent as registered / recorded mail, it is deemed to have been received 3 (three) days after an attempt for delivery has been unsuccessful and the notice thereof has been issued to the addressee.

11.4 The IGEL-Reseller or IGEL-Distributor shall be entitled to upgrade each M&S-Service-Order to a higher M&S-Service-Package with a month's notice to a calendar month's beginning, if and as far as the upgraded M&S-Service-Order's duration at least resembles the duration of the existing M&S-Service-Order. A downgrade of a M&S-Service-Order already in force shall not be permitted.

## 12 Data Protection

Upon concluding a M&S-Customer-Agreement that includes M&S-Services via Remote Access, the IGEL-Reseller shall be obliged to conclude, acting as representative (*Stellvertreter*) of IGEL, an agreement on commissioned data processing according to Art. 28 of the General Data Protection Regulation (GDPR) with the respective Customer, which shall be based upon a sample provided by the IGEL-Distributor via which the IGEL-Reseller receives the M&S-Services from IGEL or by IGEL itself.

## 13 Liability and Damages

13.1 IGEL shall only be liable to the IGEL-Reseller for damages caused by intent or gross negligence and only if the statutory requirements for a corresponding claim are met.

13.2 IGEL shall additionally be liable for damages arising out of the at least simply negligent breach of a material contractual duty or the breach of a duty, which, if discharged, would endanger the proper performance under the respective M&S-Service-Order and on the fulfillment of which the IGEL-Reseller can regularly rely (*Kardinalpflicht*).

13.3 Apart from the aforesaid, IGEL shall not be liable for any damages without limitation to the legal basis including, but not limited to, pre-contractual liability (*Verschulden bei Vertragsschluss*).



- 13.4 If and as far as IGEL is liable for negligent behavior according to sec. 13.2, the liability is limited to typical damages that have been foreseeable at the time a M&S-Service-Order has been concluded.
- 13.5 The limitations to IGEL's liability according to sec. 13.1 to 13.4 shall not apply if and as far as IGEL has taken over a guarantee (*Garantie*), for claims caused by fraud, damages due to harm done to a person's life, body or health, or to claims arising out of or based on provisions of the German product liability act (*Produkthaftungsgesetz*).
- 13.6 If and as far as the above stated provisions limit and/or exclude IGEL's liability, these limitations and/or exclusions shall apply mutatis mutandis to IGEL's employees, freelance-collaborators and/or other associated persons.
- 13.7 The IGEL-Reseller shall allow an inspection and examination of all damages for which he intends to hold IGEL liable for.

### 14 Material and/or Legal Defects

The IGEL-Reseller's legal responsibility regarding material and/or legal defects of IGEL-Software (embodied by the Delivery-Tokens) distributed by him remains unaffected by these Terms. The IGEL-Reseller, in his position as contractual partner of his Customers, especially remains responsible to fulfill the Customers' claims based on the statutory provisions regarding material and/or legal defects, if and as far as the statutory requirements are met.

### 15 Confidentiality Obligations

- 15.1 The IGEL-Reseller shall maintain secrecy concerning the business and trade secrets of IGEL disclosed to it by IGEL or coming to his knowledge during the duration of a contractual relation based on these Terms as well as after the ending of such relation. This includes, but is not limited to: Financial, technical, economical, legal, tax-, business-, employer- or management-related information (including, but not limited to, any data, records and know-how), which are related to IGEL or any of IGEL's associates, if and as far as these information have not been known to the public at the time of their disclosure to the IGEL-Reseller or have become known to the public after their disclosure to the IGEL-Reseller without any breach of this provision.
- 15.2 Documents concerning IGEL's business and trade secrets that have been disclosed to the IGEL-Reseller, shall be returned by the IGEL-Reseller without undue delay after their use in accordance with instructions hereof at the latest, however, after termination of a contractual relation based on these Terms.
- 15.3 The IGEL-Reseller is obliged to treat the contents of this Agreement and the appendices hereto as confidential. Excepted from this shall be the disclosure to persons who are subject to a statutory obligation of confidentiality.
- 15.4 The IGEL-Reseller shall also impose these confidentiality obligations upon its employees, freelance-collaborators and/or other associated persons.

### 16 Miscellaneous

- 16.1 These Terms supersede all prior Terms, agreements or contracts regarding the subject matter of these Terms.
- 16.2 If one or more provisions of these Terms are or become invalid or void, or if it contains a gap, the validity of these Terms is not affected thereby. The provision concerned shall be deemed to be replaced with a valid provision which comes closest to what IGEL had intended with respect to the purpose under the invalid or void provision.
- 16.3 All disputes arising out of or in connection with these Terms are governed by substantive German law excluding the conflict of law rules and the laws in treaties including but not limited to the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 16.4 The courts of Bremen, Germany, shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with these Terms. However, IGEL is entitled to proceed against the IGEL-Reseller before any court competent based on statutory provisions.

**Bremen, April 2021**

IGEL Technology GmbH