



**DATABASE SOFTWARE MAINTENANCE AGREEMENT**

**TERMS AND CONDITIONS**

**11-01-10**

Thank you for your interest in a Software Maintenance Agreement (this "SMA") from TigerLogic Corporation ("TigerLogic") for your Database Software. This SMA consists of: (1) Part One of this document, which describes the SMA Services available to you (the "Services Description"); (2) Part Two of this document, which sets forth the standard terms and conditions under which TigerLogic will provide SMA Services (the "Standard Terms"); and (3) if any, any SMA Additional Terms that may be agreed upon in a written agreement signed by you and TigerLogic specifically referring to the Standard Terms (the "Additional Terms").

PLEASE CAREFULLY READ THE ENTIRE SMA, INCLUDING THE ACCOMPANYING TERMS AND CONDITIONS. BY REQUESTING AND ACCEPTING SMA SERVICES FROM TIGERLOGIC, YOU ACCEPT THIS SMA AS THE LEGALLY BINDING AGREEMENT BETWEEN YOU AND TIGERLOGIC WITH RESPECT TO YOUR USE OF THE SMA SERVICES, EVEN IF YOU HAVE NOT YET PAID ANY FEES FOR ANY SMA SERVICES.

If you have any questions or concerns about this SMA, please contact us at [sales@tigerlogic.com](mailto:sales@tigerlogic.com) or call 949-442-4400.

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**PART ONE: DESCRIPTION OF SMA SERVICES**

**Purchasing SMA Services.**

SMA Services are available in renewable one-year terms for TigerLogic software products including, but not limited to, XDMS, D3, mvEnterprise, mvBase, mvDesigner, and TigerLogic Dashboard as well as connectivity and component products such as FlashCONNECT, OpenDB, D3 Oracle Gateway, and D3 MQSeries Server Interface (each, a "Product"). You may purchase SMA Services for a particular Product in one of the following three levels:

**Bronze:** Bronze Support is typically only available for End of Life Products. Telephone support is available between the hours of 8 AM-5 PM Local Time (US), Monday-Friday. TigerLogic Holidays are excluded.

**Gold:** Gold Support is available for all Products, except End of Life Products. Telephone support is available between the hours of 8 AM-6 PM Local Time (US), Monday-Friday and 8 AM-4 PM Pacific Time (US) on Saturday. Support for the Pick Data Provider for .NET Products is available between the hours of 8 AM-5 PM Pacific Time (US), Monday-Friday. TigerLogic Holidays are excluded.

**Platinum:** Platinum Support is available for most Products, except End of Life Products, certain connectivity and component Products and the Pick Data Provider for .NET Products. Telephone support is available 24 hours per day, 7 days a week including Holidays.

You must purchase one (1) year of SMA Services with each Product that you acquire from TigerLogic. After that first year, you may choose to renew or discontinue SMA Services for that Product in the manner specified below.

If you purchase SMA Services for a particular Product, then you must purchase SMA Services, at the same level, when available, for all licensed seats of that Product on a particular system ID. For example, if you have acquired ten (10) licensed seats for a particular Product on a particular system ID, then you must purchase SMA Services

for all ten (10) licensed seats, and not a portion thereof. Please see TigerLogic's Product Pricing Policies for further detail and information. These Product Pricing Policies form part of this SMA.

Please visit the TigerLogic Website for details on current Product releases and Products for which SMA Services are available, or contact your TigerLogic Sales Representative.

## How Much Do SMA Services Cost?

Please contact your TigerLogic Sales Representative or your Authorized TigerLogic Reseller for pricing.

## What Do SMA Services Include?

SMA Services include the following services as outlined below:

- Help Desk Support (for direct first-call customers)
- Maintenance Releases (major release upgrades and minor release updates)
- Phone Activations
- Re-hosting and Re-license capabilities
- Ability to add licensed seats or components
- Discounts on training

**Help Desk Support.** TigerLogic will provide help desk support via telephone, fax, email and the Internet during the coverage hours specified above, depending on the level of support that you have purchased. Help desk support consists of consultation in English with a qualified technician in regard to the installation and proper operation of supported Products; the provision of work-arounds to reported operating problems in supported Products; and remedial software maintenance as required to restore supported Products to operability.

Help Desk Support is not intended as a training vehicle and only those persons who have been properly trained to operate supported Products may use help desk support. **Additionally, if you have purchased SMA Services through an authorized TigerLogic Reseller and not directly from TigerLogic, you must contact that Reseller directly.**

**Maintenance.** Maintenance services consist of providing you with maintenance releases to supported Products on a when-and-if-available basis. Maintenance releases include major release upgrades, minor release updates and patches to supported Products. TigerLogic does not promise that it will issue a certain number of maintenance releases or any maintenance releases at all during a particular year for which you have purchased SMA Services. Maintenance releases do not necessarily include enhancements, and TigerLogic may classify releases as patches, updates (minor releases) or upgrades (major releases) at TigerLogic's sole discretion. Maintenance releases are not available on End of Life Products.

Most maintenance releases will be accessible to you via TigerLogic's Website or by contacting your TigerLogic Sales Representative. It is your responsibility to visit TigerLogic's Website to download and install maintenance releases for your supported Products. Such access is subject to and conditioned upon your acceptance of TigerLogic's then-current terms of access, which will be posted on its Website.

TigerLogic also makes copies of maintenance releases available on disk at an additional charge. Please contact your TigerLogic Sales Representative for details.

**Activations.** Activations, where applicable, are provided via the Web or by phone (for systems under this SMA). Please contact your TigerLogic Sales Representative for further information.

## What is Not Included in SMA Services?

The following services are not included in SMA Services, but may be available from TigerLogic at an additional charge. Please contact us for rates and availability.

- Training
- Onsite Installation
- Customization
- Disaster Recovery
- Error Correction
- Hardware Maintenance
- Hardware Support
- Support for Past Versions
- Onsite Services
- Installation of Upgrades and Enhancements
- Application Software Support
- Programming Services
- Data Recovery or Backup
- Data Conversion

In addition, SMA Services do not include support for Products not supplied by TigerLogic, including operating systems on which supported Products operate.

SMA Services will only be provided for versions on the current Product Status Sheet. Please contact your TigerLogic Sales Representative for further information.

## Customer's Responsibilities.

To receive SMA Services, you must fulfill the following responsibilities:

**Training.** You must ensure that your personnel are trained in how to use supported Products and the application programs, operating systems and hardware on or with which supported Products are used. It is especially important that persons using the help desk have sufficient training on the applicable supported Product to provide TigerLogic with reasonable assistance in diagnosing and addressing errors.

**Systems.** You must provide and maintain, in good operating condition, the systems (including computers, operating systems and other facilities) specified by TigerLogic as being required for operation of supported Products.

**Instructions.** You must follow TigerLogic's documented processes and procedures for use and administration of the supported Product.

**Cooperation.** You must allow TigerLogic reasonable access (at no charge) to your systems to perform diagnostics and maintenance, including remote access via TCP/IP Connection or the Internet (via WebEx or similar services). You must also execute reasonable diagnostic routines in accordance with the instructions of TigerLogic's help desk support personnel and report the results of such tests.

**Files.** You must maintain adequate, verified backup copies of all supported Products and related software and data, including operating system, application and data files, and make these available to TigerLogic on request.

**License.** You must purchase and maintain in effect a valid license from TigerLogic for each copy of supported Products that you use.

## Terminating SMA Services.

SMA Services for each Product are provided in one-year renewable terms. If you do not want SMA Services to renew for another year, you must notify TigerLogic in writing at least thirty (30) days before the current one-year term expires.

If you choose to discontinue SMA Services for a supported Product, you may subsequently resume them (so long

as TigerLogic is still offering them) by paying a re-enrollment fee in addition to the then-current annual fee. The re-enrollment fee is equal to the then-current annual fee.

## **PART TWO: STANDARD TERMS OF SERVICE**

- 1. Services Provided.** If you purchase SMA Services for a Product, then TigerLogic will provide to you SMA Services for that Product in accordance with the Services Description (Part One above), these Standard Terms, the level of SMA – Bronze, Gold or Platinum – that you have purchased, and the Additional Terms (if any). In the event of any conflict between the Services Description and these Standard Terms or any Additional Terms, these Standard Terms or the Additional Terms shall control. In the event of any conflict between these Standard Terms and any Additional Terms, the Additional Terms shall control.
- 2. Term.** With respect to each Product, this SMA commences upon delivery of the system ID or serial codes for that Product. This SMA remains in effect for such Product for the term stated on any Additional Terms document or, if no such term is stated on any such document, then on the applicable TigerLogic invoice (the "**SMA Term**"). Thereafter, the SMA Term will automatically renew for additional one-year terms upon payment by you of the then-current SMA fees unless either you or TigerLogic gives notice to the other of its intent not to renew at least thirty (30) days before the next one-year SMA Term begins.
- 3. Fees.** The fees for the initial SMA Term are as set forth on any Additional Terms document or, if no fees are stated on any such document, then on the applicable TigerLogic invoice. All such fees are non-refundable and non-cancelable (except as provided herein), payable annually in advance. TigerLogic may change the fees payable for each subsequent SMA Term by giving you notice of such changes at least thirty (30) days before such SMA Term begins. TigerLogic's obligation to provide SMA Services is contingent on your timely payment of the fees due for the then-current SMA Term. As specified in the Services Description, additional charges may apply for re-enrollment for SMA Services that you have discontinued with respect to particular supported Products. If the scope of this SMA is increased during an SMA Term (such as to provide SMA Services for additional licensed seats or components of the Product) the incremental fees will be based on the then-current list price, will be pro-rated based upon the time remaining in the then-current SMA Term and will be invoiced when the change in the scope of this SMA is effective. If you add components, you must purchase SMA Services on the underlying database and/or other dependent Products. Services requested by Customer outside the scope of this SMA will be provided, at TigerLogic's discretion, for an additional charge on a time-and-expenses basis at TigerLogic's then-current hourly rate.
- 4. EXPENSES.** You will reimburse TigerLogic monthly for TigerLogic's reasonable travel, telephone and other actual out-of-pocket expenses incurred at your request, including travel expenses incurred in providing on-site services. At your request, TigerLogic will provide documentation of expenses for which it seeks reimbursement. All fees and reimbursable expenses must be paid within the credit terms granted to you by TigerLogic.
- 5. PAYMENT TERMS.** Fees do not include taxes and Customer is responsible for paying (or reimbursing TigerLogic if it is required to pay) any sales, excise, customs, withholding or other tax that may be imposed due to the provision of SMA Services or the execution of this SMA, excluding taxes based on TigerLogic's net income. Fees not paid when due will accrue interest at the lesser of one percent (1%) per month or the highest rate allowed by applicable law. TigerLogic will be entitled to recover its reasonable costs of collection, including attorneys' fees, on any overdue account. Fees for SMA renewals are due on the renewal date.
- 6. CUSTOMER RESPONSIBILITIES.** As a condition to TigerLogic's obligation to provide SMA Services, you must perform the customer responsibilities that are set forth in the then-current Services Description (Part One of this document).
- 7. LIMITATIONS AND EXCLUSIONS.** TigerLogic will have no obligation to investigate or correct problems that: (a) cannot be reproduced by TigerLogic based on information that you provide; (b) are based on your use of

Products outside the scope of your license with TigerLogic; or (c) are caused by hardware failures, power failures, fire, flood, wind, lightning, or any intentional or negligent act or misuse.

**8. REFUNDS; EXCLUSIVE REMEDY.** If you terminate the SMA Term for cause in accordance with Section 13 or in response to a change in the Services Description in accordance with Section 14.6, then TigerLogic may, as its sole obligation and its sole discretion, and your exclusive remedy, refund a pro-rated portion of the fees paid by you for the then-current SMA Term. A "pro-rated" refund means a refund reduced pro-rata by the portion of the then-current SMA Term that has elapsed at the time of termination. This Section 8 sets forth the only circumstances in which you may be entitled to a refund of SMA fees.

**9. PROPRIETARY RIGHTS.** Nothing in this SMA constitutes a license to any TigerLogic software product. Such licenses must be purchased separately. All error corrections, updates, releases and other software, materials or information provided to you by TigerLogic, and all intellectual property rights therein ("**Work Product**"), are and will remain the exclusive property of TigerLogic or its licensors, regardless of whether you, your employees, support coordinators or agents: (a) report any errors, problems, defects, or suggestions for changes and improvements to any supported Products or (b) join in the development of the Work Product. Any Work Product used in supported Products that is supplied to you under a separate software license agreement will be subject to the terms and conditions of such applicable software license agreement.

**10. LIMITED WARRANTY.** TigerLogic warrants to you that the media, if any, on which maintenance releases to supported Products are provided will, for a period of thirty (30) days after delivery to you, be free of defects in materials and workmanship. Your exclusive remedy for breach of this limited warranty is that TigerLogic will replace any defective media, when available, that you return to TigerLogic within the thirty (30) day warranty period. Any replacement media will be warranted as provided in this Section for the remainder of the original thirty (30) day warranty period or ten (10) days, whichever is longer.

**11. DISCLAIMER OF WARRANTY. EXCEPT FOR THE EXPRESS LIMITED WARRANTY OF SECTION 10, SMA SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. TIGERLOGIC HEREBY EXCLUDES AND DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING (WITHOUT LIMITATION) ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, NON-INFRINGEMENT, TITLE, RESULTS, EFFORTS OR QUIET ENJOYMENT. THERE IS NO WARRANTY THAT THE SMA SERVICES WILL BE ERROR-FREE OR WILL FUNCTION WITHOUT INTERRUPTION. YOU ASSUME THE ENTIRE RISK ARISING OUT OF YOUR USE OF SMA SERVICES OR ANY SUPPORTED SOFTWARE. TO THE EXTENT THAT TIGERLOGIC MAY NOT DISCLAIM ANY WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.**

**12. LIMITATION OF LIABILITY. IN NO EVENT WILL TIGERLOGIC BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, OR INCIDENTAL DAMAGES, OR FOR ANY LOST DATA OR LOST PROFITS, ARISING FROM OR RELATING TO THIS SMA OR YOUR USE OF OR INABILITY TO USE SMA SERVICES OR SUPPORTED SOFTWARE EVEN IF TIGERLOGIC OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TIGERLOGIC'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS SMA OR ANY SMA SERVICES, WHETHER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE) WILL NOT EXCEED THE AMOUNTS PAID BY YOU FOR SMA SERVICES DURING THE SMA TERM IN WHICH TIGERLOGIC'S LIABILITY ACCRUES. THE EXISTENCE OF MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMIT. YOU ACKNOWLEDGE THAT THE SMA FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS SMA AND THAT TIGERLOGIC WOULD NOT ENTER INTO THIS SMA WITHOUT THESE LIMITATIONS ON ITS LIABILITY. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION WILL APPLY EVEN IF AN EXCLUSIVE REMEDY UNDER THIS SMA HAS FAILED OF ITS ESSENTIAL PURPOSE.**

**13. TERMINATION.** You may terminate the SMA Term, without refund, for any reason by giving TigerLogic a thirty (30) day written notice. TigerLogic may terminate the SMA Term, without refund, by giving notice to you

if you breach your obligations under this SMA. Upon termination or expiration of the SMA Term for any reason, TigerLogic will have no further obligation to provide any SMA Services or other services to you and you will not be entitled to a refund except as provided in Section 8. Sections 9 and 12 will survive termination or expiration of the SMA Term.

## **14. GENERAL.**

**14.1 Choice of Law and Venue.** This SMA will be governed by the laws of the State of California without giving effect to any choice of law principles that would require the application of the laws of a different country or state.

**14.2 Venue.** Any legal action between you and TigerLogic arising out of this SMA or your use of the Software must be instituted exclusively in either the federal or state courts located in Orange County, California, and you consent to jurisdiction and venue in such courts.

**14.3 Export Control.** You will not export or re-export any Software or documentation provided to you in violation of the export control laws of the United States.

**14.4 Relationship between the Parties.** The parties are independent contractors and neither party is the agent, partner, employee, fiduciary or joint venture of the other party under this SMA.

**14.5 Assignments.** You may not assign or transfer, by operation of law or otherwise, any of your rights under this SMA (including your licenses with respect to the Software) to any third party without TigerLogic's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void. TigerLogic may freely assign its rights or delegate its obligations under this SMA.

**14.6 Revisions.** TigerLogic may revise the Services Description (and thus the SMA Services provided to you) at any time by giving you at least forty five (45) days notice. If you are dissatisfied with the changes, you may notify TigerLogic within ten (10) days after you receive such notice, specifying in such notification the specific changes that you object to. Upon such notification, TigerLogic will at its election either: (a) permit you to terminate the affected SMA as of the date when the changes to the Services Description are to take effect, in which case you will be entitled to a pro-rated refund of SMA fees for the SMA Term which is terminated; or (b) provide services to you under the previous version of the Services Description for the remainder of your then-current SMA Term; upon renewal of the then-current SMA Term, services will be provided to you under the revised Services Description.

**14.7 Language.** This SMA is in the English language and its English language version will be controlling over any other translation, except as otherwise required by applicable law.

**14.8 Remedies.** If any legal action is brought to enforce this SMA, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**14.9 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this SMA on one or more occasions will not be deemed a waiver of any other provision or of such provision on any other occasion.

**14.10 Severability.** If any provision of this SMA is held unenforceable by a court, such provision may be changed and interpreted by the court to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, you agree that Section 9 will remain in effect notwithstanding the unenforceability of any other provision of this SMA.

**14.11 Entire Agreement.** This SMA, including the Description of Services, these Standard Terms, any Additional Terms, and all policies of TigerLogic referenced in any of the foregoing, constitutes the final and entire agreement between the parties regarding the provision of SMA Services or support services of any kind and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral, regarding its subject matter. This SMA may be amended only by a written document signed by both parties. The pre-printed terms stated on any purchase order or similar document submitted by you to TigerLogic with respect to this SMA, any license purchases, or any other subject, will be of no effect and will not modify, supplement or supersede this SMA.

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**Visit TigerLogic's Website at [www.tigerlogic.com](http://www.tigerlogic.com).**

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