



MAINTENANCE AND SUPPORT
Terms and Conditions

Last Update- October 2019 (to include links to [Privacy Terms](#) and [General Use Terms](#)).

AELLIUS SHALL BE RESPONSIBLE ONLY FOR SUPPORT CONTRACTED DIRECTLY BETWEEN LICENSEE AND AELLIUS AND ONLY IN ACCORDANCE WITH THESE TERMS AND CONDITIONS.

1. **Maintenance.** Provided Licensee pays to AELLIUS the annual maintenance fees (“Maintenance Fees”), or (where applicable) the annual subscription fee for annual licenses, as agreed to by the parties in a quotation or proposal provided by AELLIUS and purchased by Licensee, AELLIUS will provide maintenance and support for the Software in the configuration purchased by Licensee and in accordance with the following provisions (“Services”):
 - a. ***Obligations of AELLIUS.*** Subject to the limitations and exclusions set forth in Section 1b and 1c and any specifics or further limitations set forth in a quotation from AELLIUS accepted by Licensee, AELLIUS shall provide the Services for the Software remotely and via the designated support section of AELLIUS’ website (the “AELLIUS Support Site”) in accordance with the Service Level Agreement (“SLA”) set forth on the attached Appendix (“SLA Appendix”). Support of the Software is provided via support tickets (“Support Tickets”) only. Services shall be limited to the Support Tickets maximums set forth on the SLA Appendix and purchased by the Licensee and shall be provided remotely through email and the AELLIUS ticketing system, plus any other methods as deemed necessary by and in the sole discretion of AELLIUS. Maintenance includes all Upgrades if and when made generally available to other licensees of the Software. Updates, bug fixes, and templates (if licensed) may be available via the AELLIUS Support Site in the discretion of AELLIUS. Licensee acknowledges that other Upgrades may require AELLIUS’ personnel to install. Installation is not included in the Services. Licensee must inquire before installing any Upgrade, and AELLIUS will inform Licensee if any such installation is required and is subject to additional charges. Additional charges shall be at AELLIUS’ then current fixed installation fee or as quoted by AELLIUS, plus hourly work (if applicable) at AELLIUS’ then current hourly rates and subject to any minimum number of billable hours or other requirements of AELLIUS. Additional support policies and any changes thereto shall be as set forth on the AELLIUS Support Site and Licensee agrees to be bound thereby. Licensee shall be responsible for checking said policies and/or notices periodically and prior to opening Support Tickets.
 - b. ***Limitations on AELLIUS’ Obligations.*** Notwithstanding anything to the contrary, AELLIUS shall have no obligation to provide Licensee with any Services with respect to the Software if:
 - i. **Licensee or third party has altered or modified any portion of the Software in any manner (including but not limited to installations, reinstallations -whether to current server or new, upgrades, or reconfiguration of any Aellius software by Licensee, third party, or agent of Licensee) without the express, prior written consent of AELLIUS;**

- ii. Licensee is not using the most current version of the Software;
 - iii. Licensee has not used the Software in material conformance with operating instructions provided by AELLIUS; or
 - iv. Licensee is not in material compliance with the other terms of this Exhibit or the EULA.
- c. **Exclusions.** Services and Upgrades shall not include the following items (the “Excluded Items”):
- i. Enhancements or customizations to the Software requested by Licensee or updates or upgrades to enhancements or customizations;
 - ii. Installation fees;
 - iii. Additional or expanded license fees necessitated by the way Licensee uses the Software or additional users, transactional licenses, components, or sites;
 - iv. Support in excess of the number of Support Tickets purchased by Licensee;
 - v. Any support other than remote support via the AELLIUS Support Ticketing Site;
 - vi. Issues caused by non-compliance with the technical requirements as provided to Licensee prior to the installation of AELLIUS Software or any Upgrade;
 - vii. Any issues that are deemed by AELLIUS to be not directly related to/caused by AELLIUS Software, including but not limited to email connectivity issues, ftp connectivity issues, network issues, Citrix or database connectivity issues;
 - viii. On-site support or any other on-site services;
 - ix. Hardware and related supplies;
 - x. Training;
 - xi. Integration services;
 - xii. Specific or step-by-step development assistance for integrations developed by Licensee;
 - xiii. New versions of the Software, additional components or versions for platforms other than those purchased by Licensee;
 - i. **With regards to all AELLIUS software, AELLIUS personnel are required to perform (remotely) ALL installations, reinstallations, upgrades (unless AELLIUS gives Licensee written permission), moves to new server(s), and, in the case of LynX Monitor, configuration/reconfiguration of the JDE Server Manager, even if the Software is available on the AELLIUS support site. If Licensee does attempt such install/upgrade/reconfiguration, such installation/upgrade/reconfiguration will not be supported by AELLIUS hereunder.** Should AELLIUS in its discretion elect to provide such support, AELLIUS may, at its sole discretion, provide billable support and/or require Licensee to uninstall their installation and take the Software back to its prior state. Any work undertaken in its discretion by AELLIUS related to the unauthorized installation shall be (at AELLIUS’s sole discretion) either at a current fixed rate of AELLIUS or its current

hourly rate (minimum number of billable hours applies), with all work to be performed remotely and any retrofitting of customizations, “clean up tasks”, or reconfiguration also to be performed remotely at the then-current hourly rate in addition to any fixed install/upgrade fee;

- xiv. Any complexity that creates a significant additional work or support overhead for AELLIUS;
- xv. Support by any third-party separately contracted by Licensee, even if such third-party is an authorized reseller of AELLIUS Software or other authorized partner of AELLIUS; and
- xvi. Support or training related to Oracle J.D. Edwards EnterpriseOne Software, server operating systems, Citrix or any other software not developed by AELLIUS.

- d. AELLIUS may provide the Excluded Items and/or certain other services in its sole discretion, including but not limited to, installation, consulting and/or training, pursuant to a separate Professional Services Agreement between AELLIUS and Licensee. AELLIUS may, in its discretion, charge a fee for new versions of the Software. AELLIUS may, in its discretion, specify a fixed fee or minimum number of billable hours for Excluded Items and other services.
- e. Customizations to AELLIUS Software, (i.e. Excel macros or other components that are not standard components of AELLIUS Software) are not supported via the AELLIUS Support Site and any issues with Customizations will be, at AELLIUS's sole discretion, billable at the then-current hourly rate of AELLIUS and subject to a minimum number of hours for such billable work.

2. **Licensee's Obligations.** Licensee shall install all Updates and request Aellius personnel (via request for quotation) to install Upgrades (or request permission to install and install upon written approval being granted by Aellius) as soon as reasonably feasible and maintain the Software in good working order.

Licensee shall designate two employees as primary contacts who shall:

- a. Attend AELLIUS web-delivered admin training within 3 weeks of the installation date;
- b. Remain knowledgeable in the use of the Software;
- c. Serve as the primary contact with AELLIUS on all Software and maintenance/support issues; and
- d. Provide support to other authorized Licensee users.
- e. Become familiar with and abide by AELLIUS GENERAL TERMS AND CONDITIONS OF USE at all times (<https://www.aellius.com/legal-notices/>).

3. **Fees and Payment.**

- a. Licensee shall pay AELLIUS the Maintenance Fees, and any other fees, in the amounts set forth on the quotation of AELLIUS purchased by Licensee and as billed in all SMSA invoices delivered by AELLIUS. All fees when paid are fully earned and non-refundable.
- b. Annual Maintenance fees for the Software are due at the time of initial invoice and annually (in advance) before January 1st of that calendar year (or as otherwise specified). AELLIUS reserves the right to suspend or cease its support obligations hereunder and deny access to the Support Site and to Software Updates (including bug fixes) in the event that Maintenance fees and any additional or

expanded license fees have not been received in full by AELLIUS prior to the due date.

- c. Maintenance fees shall be subject to increases, in the sole discretion of AELLIUS, in each subsequent year of not more than 10% over the previous year.
 - d. Maintenance Fees will also increase from year to year in the event additional Excel templates, transactional licenses (additions or increases), more users, more servers, more entities/locations, or other components are added to the Software. License fees may need to be adjusted based on Licensee's usage of the Software or requirements.
 - e. Licensee shall be subject to reinstatement fees in the event Services are terminated for any reason, including suspension for nonpayment, and restarted.
 - f. All sales, use or other taxes arising out of this Agreement, the End User License Agreement or Licensee's use of the Software are Licensee's sole responsibility to report and pay to applicable authorities, except for income or franchise taxes payable by AELLIUS.
4. **Limited Warranty/Exclusive Remedy.** AELLIUS warrants that the Services shall be performed consistent with generally accepted industry standards. For any breach of this warranty, Licensee's exclusive remedy, and AELLIUS' entire liability, shall be the re-performance of Services; provided, however, that Licensee must report any deficiencies in Services provided by AELLIUS to Licensee in writing within thirty (30) days of AELLIUS' performance of Services in order to receive this warranty remedy. EXCEPT AS PROVIDED ABOVE, THERE ARE NO WARRANTIES OR CONDITIONS OF ANY KIND FOR ANY SERVICES PROVIDED BY AELLIUS, AND ALL OTHER WARRANTIES, DUTIES OR CONDITIONS WHETHER EXPRESS, IMPLIED, STATUTORY OR COLLATERAL ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE IN TRADE.
5. **Disclaimer.** UNDER NO CIRCUMSTANCES SHALL AELLIUS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION ANY DAMAGES FOR BUSINESS INTERRUPTION, LOST PROFITS OR LOST INFORMATION, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE AND EVEN IF AELLIUS HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME. CERTAIN JURISDICTIONS DO NOT PERMIT THE LIMITATION OR EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO LICENSEE. IN NO EVENT SHALL AELLIUS BE LIABLE FOR ANY AMOUNT GREATER THAN THE AMOUNT THAT LICENSEE ACTUALLY PAID FOR THE SERVICES PROVIDED HEREUNDER.
6. **Termination.** Services shall commence upon receipt of payment in full by AELLIUS and shall continue for one year ("Term"). The Term of the Services shall automatically extend for additional one year periods, and Licensee agrees to make payment in full by the due date for the renewal, unless sixty (60) days prior to the end of the relevant Term either party gives the other written notice of its intent to terminate the Services. The Services may be terminated by either party upon thirty (30) days written notice if the other party has committed a material breach of this Agreement and has not cured the breach within thirty (30) days of the notice. AELLIUS may suspend or terminate Services for non-payment.
7. **AELLIUS' Right to Use Subcontractors.** Licensee acknowledges and agrees that AELLIUS shall have the right to subcontract any or all of AELLIUS' obligations with respect to the Services hereunder to one or more parties, provided that AELLIUS shall oversee all work done by subcontractors and provided that

AELLIUS shall remain responsible for the performance of Services. Notwithstanding the foregoing or anything else contained herein to the contrary, AELLIUS shall not be responsible for and shall have no obligation with respect to support services directly contracted between Licensee and a third party, even if said third party is an authorized reseller or other partner of AELLIUS.

8. **AELLIUS' Right to Modify Support Terms.** From time to time, AELLIUS may modify these terms. Changes to Support Terms will be highlighted on the AELLIUS Support site, and any significant changes shall be communicated by email to the primary contact of Licensee.
9. **AELLIUS Privacy and Data Protection Terms.** All Services provided to clients, whether Support or Billable, shall be governed by the AELLIUS Privacy and Data Protection Terms posted here:

<https://www.aellius.com/files/legal/Aellius%20Privacy%20GDPR%202019.pdf>