

SCOPE OF APPLICATION SUPPORT – Tungsten TotalAgility (TTA) Cloud

STATEMENT OF CONFIDENTIALITY

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1 Definitions

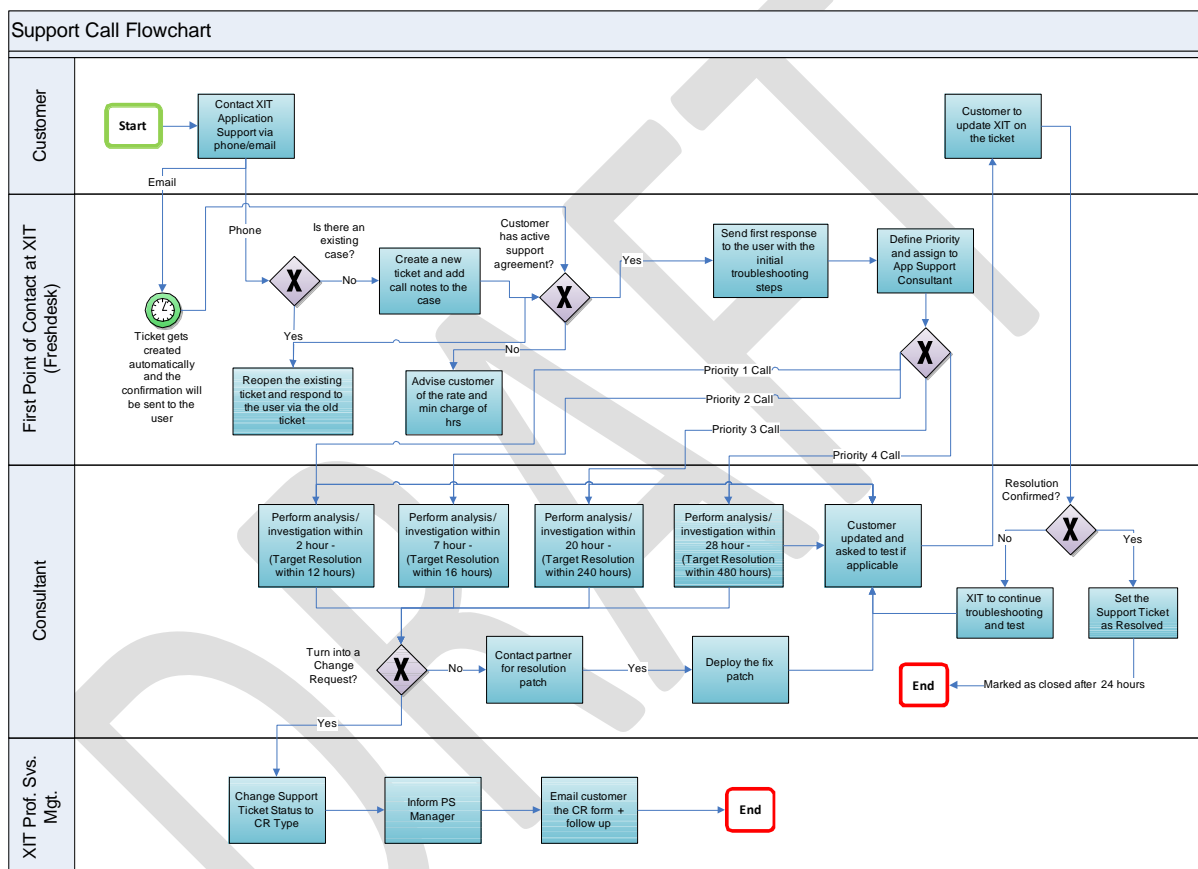
- 1.1 “Service Pack” means an update to the base Tungsten product.
- 1.2 “Version” means an upgrade of the Tungsten base product. “Software” means the standard version of the Tungsten software, supported by Tungsten, licensed by the Customer in accordance with a Software License Agreement between the parties.
- 1.3 “Customised Solution” means the unique functionality developed by Xcellerate IT.
- 1.4 “Named Callers” means the nominated two individuals identified by the Customer.
- 1.5 “Term” means each twelve (12) month period following the expiry of the Initial Term.
- 1.6 “Customer” refers to the client.
- 1.7 “Normal Business Hours” for Application Support are 9.00 am to 5.30 pm Monday to Friday except for designated Public Holidays.
- 1.8 “CR” means Change Request, approved changes to the solution of 5 days and under.
- 1.9 “SWO” means Service Work Order, approved changes to the solution of 5 plus days.
- 1.10 “Xcellerate IT” means The Business

2 Application Support

Xcellerate IT Application Support covers the unique and customised functionality within the Automated Business Process, requested and agreed by the Customer.

2.1 Xcellerate IT operates an Application Support helpdesk system, Freshdesk. Requests for Application Support can be made by email, phone or via the Freshdesk Support Portal (enquire for access).

2.1.1 The flowchart below depicts the Application Support process:



2.2 An Application Support Request may be one of the following:

- 2.2.1 A report of unexpected behavior of the Customised Solution with a deviation from the agreed Specifications. This is described in the Customer Solution Description document (CSD), Service Work Order (SWO) or a Change Request (CR).
- 2.2.2 Questions and requests with respect to the functionality and technical information of the software or Customised Solution.

2.3 The handling of an Application Support Request is as follows:

Issue Submission	Collation of the issue information to log a ticket with Xcellerate IT
Initial Response	The acknowledgement from Xcellerate IT Application Support that a Support Request has been created, Ticket ID number created, Priority Level assessed and the initial problem description documented.
Diagnosis	To determine the cause of the issue and the methodology required to resolve the ticket and bring the system/feature to an operational status.
Resolution	Ability to identify the root cause of the support ticket and to provide feedback and a fix to the customer.
Closure	<p>Application Support calls are closed as follows:</p> <ul style="list-style-type: none"> • By the customer • By Xcellerate IT when a resolution has been provided • The issue cannot be reproduced after reasonable attempts by either the customer or Xcellerate IT • When a call has had no activity/response from the customer for 5 business days <p>Note: A call may be reopened if the same issue reappears</p>

2.4 Further information supporting the aforementioned table is as follows:

2.4.1 Issue Submission

- Once the customer identifies an issue, it is their responsibility to log this with Xcellerate IT by calling (02) 8228 6600, sending an email to support@xcellerateit.com or by the Freshdesk Support Portal.
- All raised issues are assigned a unique ticket number
- Upon logging an issue, the customer must provide:
 - Error logs
 - Screen shot
 - Any changes to the browser, back-end finance system, infrastructure, networks, database, IT security or the servers/VMs
 - Detailed information to reproduce the issue
 - Any anecdotal information from the users
- Xcellerate IT will provide a ticket status report, on request, describing each case with the following information:
 - Ticket Number
 - Company that reported the issue
 - Priority (defined by the agreed SLA)
 - Current Status
 - Description of the Ticket
 - Creation Date

2.4.2 Diagnosis

- Tickets are reviewed by the Application Support Lead and assigned to the appropriate Xcellerate IT Application Support resource.
- Once a ticket number is assigned, the Xcellerate IT Application Support resource will perform analysis of the ticket and review the information provided by the customer and the following determination/status may occur:
 - Falls outside the scope of Application Support
 - The ticket has already been resolved
 - The ticket is already assigned and is a work in progress
 - The ticket does not qualify as an issue i.e. the product or solution is operating in accordance with the specifications
 - The ticket contains inadequate information

Note:

Open tickets are reviewed and triaged daily by the Application Support Lead, with a review twice weekly with the management.

Depending on the status of the ticket and the agreed SLA, a decision will be made to escalate to either Level 2 (Xcellerate IT Technical Consultant/Lead Engineer/Technical Lead) or Level 3 (Tungsten Support).

2.5 Application Support requests are categorised, as below:

Priority	Definition
Critical (URGENT)	The system is inoperable (show-stopper)
Serious (HIGH)	Some features of the system are impacted but the overall system is operational. A temporary workaround could be considered.
Minor (MEDIUM)	Minor impact on the functionality e.g. incorrect error message, intermittent fault.
No Impact (LOW)	Has no impact on the operation of the solution e.g. enquiry, new user setup/training or a request for an enhancement.

2.5.1 The Customer may advise the priority level of the Application Support Request when a ticket is created. Xcellerate IT may not agree on the chosen Priority Level. A mutual agreement is required between the parties.

2.6 Xcellerate IT undertakes to adhere to the following target responses and resolution times for any Application Support Request, categorised as below:

Priority	Initial response	Analysis/Investigation	Target Resolution
Critical (URGENT)	1 hour	2 hours	12 hours
Serious (HIGH)	3 hours	7 hours	16 hours
Minor (MEDIUM)	12 hours	20 hours	240 hours
No Impact (LOW)	16 hours	28 hours	480 hours

Note: Times noted above are within the business hours.

2.7 The response times in Clause 2.6 depend on:

2.7.1 The customer providing required information and data without delay in accordance with Clause 2.4.1 and 4.1.

2.7.2 The support request is forwarded by a named caller.

2.7.3 Should the customer provide insufficient information, SLAs / responses may be impacted.

2.8 Xcellerate IT is not liable for the delays in resolution times when the issue is random, inexplicable or insufficient details from the client.

2.9 Xcellerate IT will test and provide the required fix, as defined in section 1 of this agreement. Xcellerate IT will also provide the test scenarios and evidence, if necessary.

Note: We advise that a backup is done prior to Xcellerate IT commencing any work. It is to be further noted that additional change requests may increase the overall cost of the application support contract proportionately.

- 2.10 Xcellerate IT retains all rights, title and interest in the Customised Solution. The Customer shall not remove or alter any copyright notice, trademarks or logos. The Customer's rights pursuant to this Agreement does not mean that the rights in the form, inter alia, of copyright to the Software, the Customised Solution, Service Packs, new Versions, Remedies and Solutions are transferred to the Customer.

3 Exclusions of Application Support

3.1 Application Support under this agreement does **not** cover:

- The Customer making changes to their backend which may have an impact on the functionality/performance of the customised solution.
- Professional services/consulting effort for:
 - Change Requests (CR)
 - Major and minor version upgrades
- Installation and configuration of workstations/scanner
- Maintenance, configuration and upgrade of Non-Production environments (DEV and TEST)
- Work performed outside of Xcellerate IT Application Support hours: 9:00am to 5:30pm (AEST) Monday to Friday and Public Holidays
- Malfunction resulting from the Customer's use of the Customised Solution as a result of the 3rd party applications and hardware not specified within the Xcellerate IT's documentation
- Any additional solution training that is not within the scope of the deliverables
- Other malfunctions caused by fault in products not developed by Xcellerate IT that may affect the operation of the Customised Solution

4 Application Support Inclusions

Application Support under this Agreement covers the Customised Solution specified in the Customer Solution Description document, Services Work Orders and Change Requests.

4.1 Application Support shall include:

- Diagnosis of problems or performance deficiencies of the Licensed Software
- Resolution of the problem or performance deficiencies of the Licensed Software
- Application Support for defects within the scope of the Customised Solution, providing the Customer holds a current Application Support Agreement
- Application Support hours are 9:00am to 5:30pm (AEST) Monday to Friday excluding NSW Public Holidays

Please note: if the issue is not covered by Xcellerate IT Application Support or is a Change Request, the investigation and the resolution effort is subject to time and material charges through a Change Request process.

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5 Undertakings of the Customer

5.1 The Customer undertakes to:

- Allow only Named Callers to communicate with Xcellerate IT regarding Application Support requests
- Establish and maintain that the Named Caller has the competency in the Customised Solution and the environment
- Make its best effort to find resolutions - by using manuals, documentation, tailored documentations created by Xcellerate IT as part of the deployed solution, other experience and knowledge - before making an Application Support Request to Xcellerate IT
- During the handling of an Application Support Request, provide Xcellerate IT with:
 - System messages
 - Screen dumps
 - Sample documents
 - Copies of error messages
 - Information and data concerning any actions or changes made by the Customer and documentation associated with the issue.

Note: The Customer is responsible for backing up the environment regularly and the Customer is fully responsible for management of these backup copies. The Customer is further responsible for comprehensive testing in their Development/Test environment prior to promoting to Production.

The Customer acknowledges that breach of any of its obligations under Clause 5.1, may have an influence on Xcellerate IT's undertakings and liability under this Agreement.

6 Fees

- 6.1 The Annual Application Support Fee in the signed proposal, is calculated on the development effort of the Customised solution. When the total support effort is nearing 75% utilization for the current term, Xcellerate IT will notify the Customer with the option of purchasing additional days (minimum purchase is 1 day for each month left in the term) or moving onto Time & Materials (T&M) for the remainder of the period after 100% utilization.
- 6.2 The annual Application Support fee is invoiced in advance. Payment shall be made within thirty (30) days net from the invoice date.
- 6.3 If the Customer requests assistance not covered by this Agreement, Xcellerate IT will charge the effort on a Time & Materials (T&M) basis. Prices will be in accordance with Xcellerate IT PS standard rates at the time of the request.

- 6.4 Ongoing terms of this agreement are subject to 7.5% increase per annum.
- 6.5 Further changes (CRs) or development (SWOs) to the existing solution may incur an increase to the current Annual Application Support Fee
- 6.6 A normal working day is 9.00am – 5.30pm AEST Monday to Friday. Xcellerate IT reserves the right to charge for Application Support services rendered outside these hours on the following basis:
- For work undertaken outside normal working hours on Monday-Friday, at a rate of 1.5 times the agreed services rate for normal working days.
 - For work undertaken on weekends or public holidays, a rate of 2.0 times the agreed services rate for normal working days.

7 Confidentiality

- 7.1 Both parties agree to treat as confidential all information supplied by the other party under this Agreement which is designated as confidential by such other party or is by its nature clearly confidential, but this shall not extend to any information which is rightfully in the possession of the other party prior to the commencement of the negotiations leading to this Agreement, or which is already generally known or becomes so at a future date (other than as a result of a breach of this clause) and not to divulge any such confidential information to any person except to its employees and then only to those employees who need to know the same, and to ensure that its employees are aware of and comply with the provisions of this clause. If any information must be divulged, the customer should seek prior approval from Xcellerate IT.

8 Term and Termination

- 8.1 This Agreement becomes effective upon the Commencement Date and is valid for the Initial Term. The new invoice or contract will be drawn up two (2) months prior to the end of the current contract. Unless terminated by either party giving notice of termination no later than three (3) months prior to the end of the Term, this Agreement is thereafter prolonged in periods of twelve (12) months, on a rolling basis.
- 8.2 Each party is entitled to terminate this Agreement with immediate effect, if:
- 8.2.1 The other party should commit or permit a material breach of any of the obligations herein contained and should fail to remedy such breach within thirty (30) days after receipt of notice from the complaining party
- 8.2.2 The other party is put into bankruptcy, stops its payments, starts negotiations for a composition, enters into liquidation or may otherwise be deemed to have become insolvent.

9 Liability

- 9.1 Nothing in this Agreement shall exclude liability for death or personal injury or damage to property resulting from the negligence of either party, its employees, agents or its sub-contractors, provided that liability for property damage shall not exceed during any Term the sum of one million (AU\$1,000,000) in respect of any one claim or series of connected claims arising from the same event.

- 9.2 To the maximum extent permitted by applicable law, Xcellerate IT shall not be liable for any indirect, incidental or consequential damages, (including, without limitation, damage or loss of business profit, lost savings, business interruption, third party claims, loss of business information or data, or any other pecuniary loss) arising out of the provision of services under this Agreement or use of or inability to use such. The foregoing limitation will not apply with respect to damages due to Xcellerate IT's gross negligence or willful acts.
- 9.3 Under no circumstances (irrespective of the loss or damage) shall Xcellerate IT's total liability for damages during any Term exceed the Annual Maintenance Fee paid by the Customer for said Term. With respect to the Initial Term, for the purpose of this Clause 9.2, the definition Term shall mean the Initial Term and the definition Annual Maintenance Fee shall mean the Initial Maintenance Fee, proportionate divided into twelve (12) month parts.

10 General

- 10.1 The Customer may, subject to prior written notice, transfer the rights and obligations under this Agreement to an affiliate of the Customer where "affiliate" means a company controlled by the Customer or a company controlling the Customer or a company controlled by such a holding company where "control" shall mean having, directly and/or indirectly, a fifty-one (51) % interest or more by capital and shareholding or voting rights. The foregoing is conditional that the Customer under the Software License Agreement transfers the Software License Agreement to the same affiliate.
- 10.2 Any notice or other document to be given hereunder shall be given in writing either personally or by sending the same prepaid registered letter to the address of the relevant party set out in this Agreement or to such other address as the party may have notified to the other for the purposes hereof. Any notice sent by post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered seven (7) days after dispatch and in proving the fact of dispatch it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted.
- 10.3 If fulfilment by either party of its undertakings pursuant to this Agreement is prevented by circumstances beyond the control of the parties such as industrial dispute, bolt of lightning, fire, war, pandemic, mobilisation or general military call-up, uprising and riot, restrictions in the availability of motive power, general scarcity of transport, goods and energy as well as fault or delay in deliveries from a sub supplier as a result of the above circumstances, this shall constitute grounds for discharge from contractual obligations, carrying entitlement to an extension of time limits and discharge from liability to pay penalties. This shall apply regardless of whether the cause of the delay occurs before or after the agreed date of delivery. If performance of this Agreement is substantially prevented for more than three (3) months as a consequence of any of the above circumstances, either party is entitled to give written notice of its discharge from performance of this Agreement without thereby becoming liable to pay compensation.
- 10.4 This Agreement constitutes the entire agreement between the parties hereto and replaces any other prior agreement or understanding whether written or oral which may have existed between Xcellerate IT and The Customer with respect to the subject matter hereof.
- 10.5 Any amendments or supplements to this Agreement shall be made in writing, as shall representations as to performance and other undertakings, consents and agreements in connection with this Agreement.
- 10.6 Should either party make a concession beyond the terms of this Agreement, such concession shall not alter or affect its rights or obligations on other occasions.

- 10.7 No waiver by a party of a breach of any provision of this Agreement shall constitute a waiver of any other breach of that or any other provision of this Agreement.
- 10.8 This Agreement shall be governed by the substantive laws of Australia and each party agrees to submit to the exclusive courts of New South Wales.

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