

# IMPROVING CSP

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*Support Agreement – 01.2020*

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This Support Agreement (“Agreement”) sets forth the terms and conditions under which ProSource IT Consulting, Inc. (DBA – Improving-Cleveland, “Improving”) will provide support and maintenance to its Customers. Customer hereby agrees that the following terms and conditions shall govern the support and maintenance services provided by Improving. By payment of the applicable product or service fee(s) Customer hereby agrees to the following terms and conditions, including any attachments or addenda hereto:

## 1. Support Services

- 1.1 Eligibility.** Customer is eligible for Support Services while this Agreement is maintained and valid in all parts across both Customer and Improving. Additionally, the following must be met and maintained:
- i. **Stable and Working Customer Environment.** Customer Environment is in a stable and working condition per Customer expectations without any known issues or Errors. Improving reserves the right to inspect the environment upon commencement of this Agreement for the purpose of identifying and validating the Customer Environment.
  - ii. **Products.** Support Services are only provided to Products obtained through Improving.
  - iii. **Licensing Percentage.** Support Services are only provided for the Products which have at least 80% of total licenses obtained through Improving.
- 1.2 Support Network.** Customer contact(s) will have access to the Improving Support Network, which includes certain Improving documentation and other resources. The Improving Support Network consists of the online support web site accessible by Customer at <https://supportdesk.improving.com>.
- 1.3 Service Request Management.** The ability to create service requests online, allowing Customer to describe technical challenges privately to: (i) determine if a problem Customer is encountering is attributable to an Error and (ii) to assist in resolving Errors reported by Customer that occur during normal usage of Products.
- 1.4 Live Support.** Improving may initiate telephone, e-mail or web conferencing support for resolution of certain support requests with Customer contact(s).
- 1.5 Error Correction.** Improving will use reasonable commercial efforts to remedy Errors reported by Customer to Improving. Such remedy may consist of corrected portion(s) of service

configurations or communication to Customer of a Workaround that gives Customer the ability to achieve substantially the same functionality as would be obtained without the Error, as determined by Improving.

**1.6 Service Level Expectation.** Improving Support Services shall respond personally and directly to all service requests submitted through proper mechanisms by Customer within 4 business hours. Improving Support Services may leverage automated system acknowledgements of successfully receiving a support request from Customer, but any automated message is not considered to satisfy the 4-business hour commitment. This response commitment applies to standard operating business hours as defined in section 2.1 of this Agreement.

## 2. Limitations of Support Services

**2.1 Business Hours and Language.** Improving shall provide Support Services to Customer only during normal business hours defined as Monday to Friday between the hours of 8:00AM and 5:00PM Eastern Standard Time, excluding Improving's recognized holidays. All Support Services shall be conducted in the English language only.

**2.2 Unsupported Components and Devices.** Support Services are only valid and available for Products obtained by Customer through Improving. Improving shall have no obligation to provide support for Products marked as "unsupported" or otherwise designated as not being eligible for support. Improving does not, and has no obligation to, provide Support Services for Legacy Products and End of Life Products.

**2.3 Services Deliverables.** Improving shall have no obligation to provide support for any professional services deliverables provided to Customer, including but not limited to implementation services and any software or hardware that Customer may receive as part of such services that are not acquired through Improving.

**2.4 General.** Improving uses commercially reasonable efforts to provide the services under this Agreement; however, Customer acknowledges that Improving cannot guarantee that every question, problem, issue or error reported by Customer can or will be resolved. This Agreement shall not apply, or obligate Improving to provide, any support for Products that a customer obtains from or through any source other than Improving, including but not limited to, any distributors used or recommended by Improving.

## 3. Customer Responsibilities

**3.1 Notice and Assistance.** Customers shall notify Improving of intent to use Support Services and provide all relevant information known to Customer, and as requested by Improving, as well as sufficient support and test time on Customer's computer system to determine if a problem is attributable to an error and, if applicable, to correct any errors and determine if an error has been

corrected. Customer shall promptly respond to Improving requests for additional information or assistance.

**3.2 Contact.** Customer must designate at least one, but not exceeding five, named contact person to be designated as an authorized representative for accessing Support Services. Customer will notify Improving of any and all changes to authorized named contacts under this Agreement.

## 4. Term and Termination

**4.1 Term.** Improving shall provide support as described in this Agreement under the conditions that Customer adheres to all other provisions and requirements of this Agreement and maintains an active subscription through Improving. The term of this agreement is determined and aligned with the term of the active subscription in which it is associated to.

**4.2 Termination.** Each party may terminate this Agreement if the other party materially breaches its obligations hereunder and fails to cure such breach within thirty (30) days of the non-breaching party's written notices thereof. In the event of termination or expiration of this Agreement, all fees or charges then due and payable, or to become due and payable in the future based upon services already rendered, shall be immediately due and payable to Improving and Customer's obligations to pay such amounts shall survive the termination of this Agreement.

## 5. Fees and Payment

Customer shall pay to Improving the applicable support and maintenance fees for Support Services. Support Services fees shall be payable in accordance with the applicable Quote, within thirty (30) days after the date of the applicable Improving invoice and shall accrue commencing upon the date the Product was licensed or purchased by Customer pursuant to the Improving CSP Terms & Conditions and any additional terms as set forth by Product's Supplier.

## 6. Confidential Information

**6.1 Access to Confidential Information.** In the event either party obtains access to the Confidential Information of the other party in the course of performing this Agreement, the party obtaining such information shall maintain the confidentiality of such information in the same manner it maintains confidentiality of its own similar Confidential Information.

**6.2 Disclosure of Confidential Information.** If any Confidential Information must be disclosed to any third party by reason of legal, accounting or regulatory requirements beyond the reasonable control of the receiving party, the receiving party shall promptly notify the disclosing party of the order or request and permit the disclosing party (at its own expense) to seek an appropriate protective order.

**6.3 Use of Acquired Knowledge.** This Agreement shall not be construed to prohibit, and Improving shall be entitled to use for any purpose, including without limitation use in development, promotion, support and maintenance of Products and Services any information received from

Customer in association with the support services described in this Agreement that may be retained as know-how, ideas, processes or expertise in the unaided memories of Improving's personnel.

## 7. Limitation of Liability

Improving and its licensors shall not be liable to Customer or any third party for any loss of profits, revenue or goodwill, costs of procurement of substitute goods or services, loss or interruption of business, loss of anticipated savings, or loss of data, or any indirect, exemplary, punitive, special, incidental or consequential damages of any kind arising from or related to this Agreement, however caused and regardless of the form of action whether in contract, tort (including negligence), strict product liability or any other legal or equitable theory even if Improving has been advised of the possibility of such damages. In no event will Improving's aggregate cumulative liability for any claims arising out of or related to this Agreement exceed the fees paid to Improving by Customer hereunder for the then-current Support Term.

## 8. General

If any provisions of this Agreement are determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby. Nothing contained herein shall be construed as creating any agency, employment relationship, partnership, principal-agent or other form of joint enterprise between the parties. This Agreement constitutes the complete, final and exclusive statement of the agreement between Improving and Customer, which supersedes all proposals, oral or written, and all other communications between parties relating to the subject matter of this Agreement. No waiver, alteration or modification of the provisions of this Agreement will be valid unless made in writing and signed by a corporate office of Improving. Each party agrees that the use of pre-printed forms, such as statements of work, quotes or orders, is for convenience only and all terms and conditions stated thereon are void and of no effect.

## 9. Definitions

**Confidential Information** means any information disclosed on written or magnetic media during the Term of this Agreement that is marked "confidential" or with a similar legend at the time of disclosure to the receiving party.

Confidential Information shall not include any information that is (a) published or otherwise available to the public other than by breach of this Agreement; (b) rightfully received by the receiving party from a third party without confidentiality limitations; (c) independently developed by the receiving party without reference to the Confidential Information; (d) known to the receiving party prior to its first receipt of such information from the disclosing party; or (e) hereinafter disclosed by the disclosing party to a third party without restriction on disclosure.

**Current Product** means those products which have not been discontinued, retired or otherwise marked as unsupported by Microsoft or any other Supplier in which Improving CSP resells.

**Customer Environment** means the current configurations of services and Products within the scope of this Agreement and any processes or means of utilizing, deploying or otherwise consuming such services and Products.

**End of Life Product** or **EOL Product** means those Products which have been discontinued or retired by Microsoft (or the Product Supplier), and for which Microsoft (or the Product Supplier) no longer offers standard support and maintenance services.

**Error(s)** means programming or functionality errors in the Product(s) in the form provided by Improving or a third-party Supplier that prevent the Product(s) from substantially conforming to its published specifications.

**Legacy Product** means any Product which may not have become an End of Life Product, but for which Microsoft (or the Product Supplier) no longer offers standard support and maintenance services.

**Product(s)** means any software, cloud service, hardware device or any other licensed or purchased service through Improving.

**Supplier** means the third-party Product manufacturer, developer or producer in which Improving resells through Improving.

**Support Term** means the period in which Customer is entitled to Support Services under this Agreement. The Support Term is determined by having an active and paid subscription service through Improving and is the same as the term of such subscription for a specific Product.

**Workaround(s)** means a series of instructions, procedural steps or usage clarifications to avoid an Error or circumvent its effects.