

Order #:	
Agreement Start Date:	
Agreement Duration:	

**PERSISTENT CUSTOMER TERMS –
SUPPORT
Radia Client Automation software**

1. **Parties.** These terms represent the agreement (“**Agreement**”) that governs the purchase of support services from Persistent Systems entity identified in the signature section below (“**Persistent Systems**”) by the Customer entity identified below (“**Customer**”).
2. **Orders.** “**Order**” means the accepted order including any supporting material which the parties identify as incorporated either by attachment or reference (“**Supporting Material**”). Supporting Material may include (as examples) support product lists, hardware or software specifications, standard or negotiated service descriptions, data sheets and their supplements, and statements of work (SOWs), published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated Persistent Systems’ website.
3. **Scope and Order Placement.** These terms may be used by Customer either for a single Order or as a framework for multiple Orders. In addition, these terms may be used on a global basis by the parties’ “**Affiliates**”, meaning any entity controlled by, controlling, or under common control with a party. The parties can confirm their agreement to these terms either by signature where indicated at the end or by referencing these terms on Orders. Affiliates participate under these terms by placing orders which specify service delivery in the same country as the Persistent Affiliate accepting the Order, referencing these terms, and specifying any additional terms or amendments to reflect local law or business practices.
4. **Order Arrangements.** Customer may place orders with Persistent Systems through our website, customer-specific portal, or by letter, fax or e-mail. Where appropriate, orders must specify a service delivery date. If Customer extends the service delivery date of an existing Order beyond ninety (90) days, then it will be considered a new order.
5. **Prices and Taxes.** Prices will be as quoted in writing by Persistent or, in the absence of a written quote, as set out on our website, customer-specific portal, or Persistent published list price at the time an order is submitted to Persistent. Prices are exclusive of taxes, duties, and fees (including relocation charges, installation, shipping, and handling) unless otherwise quoted. In case of return of product to Persistent via shipment, the risk of loss and damage for any tangible deliverable will pass to Customer at Customer’s facility. If a withholding tax is required by law, please contact the Persistent order representative to discuss appropriate procedures.
6. **Invoices and Payment.** Customer agrees to pay all invoiced amounts within thirty (30) days of Persistent’s invoice date. In the event there is a delay in payment for more than 10 days from due date, Customer shall pay an interest greater of 1.5% per month or the maximum permitted amount on the delayed payments from the due date of payment. Persistent may suspend or cancel performance of open Orders or services if Customer fails to make payments when due.
7. **Support Services.** Persistent’s support services will be described in the applicable Supporting Material, which will cover the description of Persistent’s offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported. Service of a product moved to

another location is subject to availability and modified service response time.

8. Eligibility.

Persistent's service, support and warranty commitments do not cover claims resulting from:

1. improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
2. Modifications or improper system maintenance or calibration not performed by Persistent or authorized by Persistent;
3. failure or functional limitations of any non- Persistent software or product impacting systems receiving Persistent support or service;
4. malware (e.g. virus, worm, etc.) not introduced by Persistent; or
5. abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond Persistent's control.

9. Dependencies. Persistent's ability to deliver services will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services.

10. Change Orders. We each agree to appoint a project representative to serve as the principal point of contact in managing the delivery of services and in dealing with issues that may arise. Requests to change the scope of services or deliverables will require a change order signed by both parties.

11. Services Performance. Services are performed using generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any such service concerns and Persistent will re- perform any service that fails to meet this standard.

12. Intellectual Property Rights. No transfer of ownership of any intellectual property will occur under this Agreement. Customer grants Persistent a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for Persistent and its designees to perform the ordered services.

13. Intellectual Property Rights Infringement. Persistent will defend and/or settle any claims against Customer that allege that a Persistent -branded patch, update, upgrade or enhancement ("Deliverable") as supplied under this Agreement infringes the intellectual property rights of a third party. Persistent will rely on Customer's prompt notification of the claim and cooperation with our defense. Persistent may modify the Deliverable so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to Customer the amount paid for the affected Deliverable in the first year or the depreciated value thereafter or, for support services, the balance of any pre-paid amount or, for professional services, the amount paid. Persistent is not responsible for claims resulting from any unauthorized use of the products or services. Persistent has no obligation for any claim of infringement arising from: Persistent's compliance with, or use of, Customer's designs, specifications, instructions or technical information; unapproved modifications by or on behalf of Customer; or product use outside the scope of specifications or written instructions of Persistent. This shall be the exclusive remedy of the Customer under the Agreement for the third party infringement claims.

14. Confidentiality. Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees, agents or contractors with a need to know such information to

support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.

15. **Personal Information.** Each party shall comply with their respective obligations under applicable data protection legislation. Persistent does not intend to have access to personally identifiable information (“PII”) of Customer in providing services. To the extent Persistent has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. Persistent will use any PII to which it has access strictly for purposes of delivering the services ordered.
16. **Global Trade compliance.** Services provided under these terms are for Customer’s internal use and not for further commercialization. Persistent may suspend its performance under this Agreement to the extent required by laws applicable to either party.
17. **Limitation of Liability.** The limitations and exclusions in this Section 17 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver. Regardless of the basis on which Customer is entitled to claim damages from Persistent (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Persistent 's entire liability for all claims in the aggregate arising from or related to each Order under this Agreement will not exceed the amount of any actual direct damages up to the charges (if the Order is subject to fixed term charges, up to three months' charges) Customer paid under the Order that is the subject of the claim.

UNDER NO CIRCUMSTANCES IS PERSISTENT, ITS SOFTWARE DEVELOPERS OR SUPPLIERS BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: LOSS OF, OR DAMAGE TO, DATA; SPECIAL, INCIDENTAL, EXEMPLARY, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

19. **Disputes.** If Customer is dissatisfied with any services purchased under these terms and disagrees with Persistent’s proposed resolution, we both agree to promptly escalate the issue to a Vice President (or equivalent executive) in our respective organizations for an amicable resolution without prejudice to the right to later seek a legal remedy.
20. **Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
21. **Termination.** Either party may terminate this Agreement on written notice if the other fails to meet any material obligation and fails to remedy the breach within thirty (30) days after being notified in writing of the details. Persistent has a right to terminate the Agreement if the Customer fails to pay any sums due as prescribed in this Agreement. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations. Any terms in the Agreement which by their nature extend beyond termination or expiration of the Agreement will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.
22. **Assignment.** Except as provided in the Agreement, neither party may assign or transfer the Agreement nor any of its rights nor obligations under this Agreement without the other party’s prior written consent which consent shall not be unreasonable withheld or delayed . Any attempted assignment or transfer without such consent will be void. Persistent may assign or transfer any of its rights or obligations under this Agreement and applicable Service upon notice in connection with a merger, reorganization, transfer, sale of

assets or product lines, demerger or spin-off transaction or change of control or ownership of Persistent, or its permitted successive assignees or transferees.

- 23. General.** Use, distribution or disclosure of products by the U.S Government is subject to DFARS 227.7202-3 (Rights in Commercial Computer Software), DFARS 252.227-7015 (Technical Data – Commercial Items), and FAR 52.227-19 (Commercial Computer Software-Restricted Rights). This Agreement represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties. The Agreement will be governed by the laws of the country of Persistent or the Persistent Affiliate accepting the Order and the courts of that locale will have jurisdiction, however, Persistent or its Affiliate may, bring suit for payment in the country where the Customer Affiliate that placed the Order is located. Customer and Persistent agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Claims arising or raised in the United States will be governed by the laws of the state of Delaware, excluding rules as to choice and conflict of law.

The parties confirm their agreement to these terms either by referencing them in the relevant Order or by executing below:

Signed for Persistent:
[Insert signature]

By:
[Insert name]

Title:
[Insert signatory's business title]

Persistent Entity:

Date:
[Insert date]

Signed for Customer:
[Insert signature]

By:
[Insert name]

Title:
[Insert signatory's business title]

Customer Entity:

Date:
[Insert date]