

Binalyze Support Terms & Conditions

Binalyze will provide Support Services to Customer according to the End User License Agreement ('Agreement') and Support Services Terms and Conditions set forth below. Capitalized terms not otherwise defined herein will have the meaning set forth in the Agreement.

1.0 Definitions

- 1.1 **"Error"** means a failure of the Licensed Software to perform in substantial accordance with the Documentation.
- 1.2 **"Error Correction"** or **"Correction"** means the use of reasonable commercial efforts to correct Errors.
- 1.3 **"Fix"** means the repair or replacement of object or executable code versions of Licensed Software to remedy an Error.
- 1.4 **"Previous Sequential Release"** means at any time the release of Licensed Software that has been replaced by the then current release of the same Licensed Software. Notwithstanding anything else, a Previous Sequential Release will be supported by Binalyze only for a period of six (6) months after release of the then-current release.
- 1.5 **"Severity 1 Error"** means an Error that renders Licensed Software inoperative or causes Licensed Software to fail catastrophically.
- 1.6 **"Severity 2 Error"** means an Error that substantially degrades the performance of Licensed Software or materially restricts Customer's use of the Licensed Software.
- 1.7 **"Severity 3 Error"** means an Error that causes only a minor impact on the performance of Licensed Software or Customer's use of Licensed Software.
- 1.8 **"Support Services"** or **"Support"** means Binalyze support services as described in Section 4 and/or Section 6, as applicable.
- 1.9 **"Support Request"** means a Customer request made to Binalyze in accordance these Support Services Terms and Conditions.
- 1.10 **"Telephone Support"** means technical support telephone assistance provided by Binalyze to the Technical Support Contact concerning the installation and use of the then-current release of Licensed Software and the Previous Sequential Release.
- 1.11 **"Technical Support Contact"** means the person designated by Customer that may contact Binalyze for support.
- 1.12 **"Workaround"** means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of Licensed Software.

2.0 Term, Renewal Fees

- 2.1 The term of Support shall be one (1) year from the Support order date (the **"Initial Support Term"**). After the Initial Support Term, the Support shall automatically renew, and all applicable fees shall be due at the commencement of each successive one (1) year period (each a **"Renewal Support Term"**) unless either party notifies the other of cancellation of Support Services no later than forty-five (45) days prior to the end of such Support Term.
- 2.2 The Initial Support Term and any Renewal Support Terms, if any, are referred to collectively as the **"Support Term"**.
- 2.3 Following the initial Support Term, Binalyze may change the fees for Support set forth above by providing Customer with thirty (30) days' written notice in advance of the effective date of any change in such fees.
- 2.4 Binalyze may suspend or cancel Support Services if Customer breaches either the Agreement or any material provision of these Support Services Terms and Conditions and such breach is not remedied within thirty (30) days after Customer receives notice of the breach.

3.0 Replacement Software

3.1 If Binalyze introduces a successor product (“**Replacement Software**”) with substantially the same features and functionality as the original Licensed Software, and Customer has purchased and is entitled to Support Services for the original Licensed Software as of the date Binalyze offers the Replacement Software to customers, then Customer shall be entitled to receive, upon request, the Replacement Software (without additional charge) and Support Services thereon. Customer must de-install and destroy the original Licensed Software.

4.0 Support Services

4.1 **In General.** During the Support Term, Binalyze shall provide Customer with (i) reasonable Support for Customer’s Technical Support Contact, (ii) Error Correction, and (iii) product updates that Binalyze in its sole discretion makes generally available to its other similarly situated customers at no charge. Binalyze’s Support is available Monday through Friday, 7 a.m. to 7 p.m. CET., excluding Binalyze holidays. Customer may designate up to a maximum of two (2) Technical Support Contacts with Binalyze’s standard Support Services. Binalyze support can be contacted via three means:

4.1.1 Customer may contact Binalyze Support via Binalyze Support Portal at <https://www.binalyze.com/support>

4.1.2 Customer may contact Binalyze Support by emailing support@binalyze.com

4.1.3 Customer may contact Binalyze Support by calling Telephone Support (1 510 900 9443)

Binalyze will make commercially reasonable efforts to assist the Customer with the installation and configuration of the Licensed Software during the hours specified in Section 4.1 as part of Support Services, including, but not limited to:

- (a) Specify hardware and software requirements; and
- (b) Walk-through Binalyze’s pre-deployment and production deployment checklist(s), as applicable.

As conditions precedent: Customer will support remote delivery via teleconference or WebEx; Binalyze will not request and Customer will not provide logical or physical access to Customer data or systems; Customer will assign qualified technical administrators and project management personnel to perform hands-on installation and configuration tasks; Customer will make a good-faith effort to ensure timeliness of deployment and Customer will provision alternate physical or virtual server(s) to permit initial agent deployment, if necessary; and Customer will ensure server(s) are in one location.

4.2 **Error Correction.** Binalyze shall use commercially reasonable efforts to correct reproducible Errors reported by Customer in the current unmodified release of the Licensed Software, in accordance with the severity level reasonably assigned to such Error by Binalyze :

4.2.1 **Severity 1 Error:** Binalyze shall promptly commence the following procedures: (i) assign Binalyze engineers to correct the Error; (ii) notify Binalyze management that such Error has been reported and of steps being taken to correct such Error; (iii) provide Customer with periodic reports on the status of the corrections; and (iv) initiate work to provide Customer with a Workaround or Fix.

4.2.2 **Severity 2 Error:** Binalyze shall exercise commercially reasonable efforts to include a Fix for the Error in the next regular Licensed Software maintenance update.

4.2.3 **Severity 3 Error:** Binalyze may include a Fix for the Error in a later major release of the Licensed Software.

4.3 **Unsupported Failures.** If Binalyze believes that a problem reported by Customer may not be due to an Error in the Licensed Software, Binalyze will so notify Customer. At that time, Customer may (1) instruct Binalyze to proceed with problem determination at Customer’s possible expense as set forth below or (2) instruct Binalyze that Customer does not wish the problem pursued at Customer’s possible expense. If Customer requests that Binalyze proceed with problem determination at Customer’s possible expense and Binalyze determines that the problem was not due to an Error in the Licensed Software, Customer shall pay Binalyze, at Binalyze’s then-current and standard consulting rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. If Customer informs Binalyze that it does not wish the problem pursued at Customer’s possible expense or if such determination requires effort in excess of Customer’s instructions, Binalyze may, at its sole discretion, elect not to investigate the problem without liability therefor.

4.4 **Exclusions.** Notwithstanding the foregoing, Binalyze shall have no obligation to provide Support for:

- (a) altered, damaged or modified Licensed Software or any portion of the Licensed Software incorporated with or into other software;
- (b) Licensed Software that is not the then-current release or immediately Previous Sequential Release; or

(c) Licensed Software issues caused by Customer's negligence, abuse or misapplication, Customer's use of Licensed Software other than as specified in the Documentation, or by other factors beyond the control of Binalyze ;
or

(d) Third Party Components or Third Party Software, as applicable.

4.5 **Onsite Support.** Onsite support may be obtained from Binalyze at its then current rates.

5.0 Customer Obligations

Customer shall have the following maintenance and support obligations:

5.1 All Support Requests shall be submitted by Customer to Binalyze through Customer's Technical Support Contact(s). Customer may change its designation on written notice to Binalyze.

5.2 Customer shall provide Binalyze with free and full access to the Licensed Software for purposes of rendering Support, including, where appropriate, dedicated modem access. Any time expended because of delays caused by Customer in providing Binalyze with such access to the Licensed Software will be billed to Customer at Binalyze's then current time and material rates.

5.3 Customer is responsible for (1) preparing and maintaining their systems and facilities in accordance with the specifications of the appropriate suppliers, (2) securing all required permits, inspections, and licenses, (3) providing adequate personnel to assist Binalyze in carrying out its duties under this Agreement, (4) installing any Fixes, Enhancements, and any other updates and improvements to the Licensed Software made generally available by Binalyze, and (5) complying with all applicable state and federal laws.

5.4 Customer shall ensure the appropriate Customer personnel have been trained in the operation, support, and management of the Licensed Software.

5.5 Customer shall be solely responsible for maintaining all necessary backup and recovery procedures to prevent loss of its data.

5.6 Customer shall install and implement Fixes, Enhancements, and any other updates and improvements to the Licensed Software made generally available by Binalyze within sixty (60) days of their general availability, unless a delay is mutually agreed upon in writing by the parties.

5.7 Customer shall obtain at Customer's expense all additional equipment, latest level of third party software as designated by Binalyze, and professional services required in response to federal and state regulatory change, or relating to Fixes, Enhancements, and any other updates and improvements to the Licensed Software made generally available by Binalyze.