

The following Maintenance and Support Terms and Conditions (these “**Support Terms**”) are made part of the agreement between Customer (as identified on the Quote) and Service Provider (as identified on the Quote) (the “**Master Agreement**”).

1. SUPPORT AND MAINTENANCE TERMS

Service Provider and Customer agree to the terms and conditions set forth in the [“Maintenance and Support Addendum.”](#)

2. WARRANTY

Service Provider warrants all services performed under these Support Terms shall be performed in a workmanlike and professional manner. EXCEPT AS OTHERWISE STATED IN THESE SUPPORT TERMS, SERVICE PROVIDER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SERVICE PROVIDER, ITS SERVICE PROVIDER AFFILIATES, OR ITS THIRD PARTY LICENSORS OR SUBCONTRACTORS BE LIABLE ON ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), ATTORNEYS FEES AND COSTS OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE MAINTENANCE AND SUPPORT SERVICES WHICH GAVE RISE TO SUCH DAMAGES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SERVICE PROVIDER, SERVICE PROVIDER AFFILIATES OR ITS THIRD PARTY LICENSORS OR SUBCONTRACTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES AND COSTS, NEGLIGENCE, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL.

THE FOREGOING LIMITATIONS APPLY EVEN IF A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

3. MISCELLANEOUS

3.1. **Customer Facilities.** To the extent required by Service Provider, Customer will, upon request, promptly make available to Service Provider certain of its facilities, computer resources, software programs, networks, personnel, and business information as are required to perform any service or obligation hereunder. Service Provider agrees to comply with Customer’s rules and regulations regarding safety, security, and conduct, provided Service Provider has been made aware of such rules and regulations.

3.2. **Purchase Orders.** Customer may provide Service Provider with a valid purchase order immediately upon execution of a Quote. Notwithstanding anything to the contrary herein, purchase orders are to be used solely for Customer’s accounting purposes and any terms and conditions contained therein shall be deemed null and void with respect to the parties’ relationship and these Support Terms, including any Quotes entered into pursuant hereto. Customer’s failure to issue a purchase order or provide such purchase order to Service Provider shall in no way relieve Customer of any obligation entered into pursuant to these Support Terms including, but not limited to, its obligation to pay Service Provider in a timely fashion.

3.3. **Affiliates and Third Parties.** At the direction and sole discretion of Service Provider, affiliates of Service Provider (the “Service Provider Affiliates”) may perform certain tasks related to Service Provider’s obligations and rights under the Quote and the Master Agreement, including, but not limited to, invoicing, payment, technical support, project management and/or sales support. Customer hereby consents to the Service Provider Affiliates’ role. Customer further agrees and acknowledges that Service Provider and Customer are the only parties to the Quote and the Master Agreement, and that any action taken by Service Provider Affiliates in connection with the performance of Service Provider’s obligations under the Quote and the Master Agreement will not give rise to any cause of action against the Service Provider Affiliates, regardless of the theory of recovery. Service Provider shall at all times retain full responsibility for Service Provider Affiliates’ compliance with the applicable terms and conditions of the Quote and the Master Agreement. Service Provider will have the right to use third parties, including offshore entities who employ foreign nationals, as well as employees and contractors of Service Provider Affiliates and subsidiaries, who may also be foreign nationals (collectively, “Subcontractors”) in the performance of its obligations hereunder and, for purposes of these Support Terms, all references to Service Provider or its employees will be deemed to include such Subcontractors. Service Provider will have the right to disclose Customer Confidential Information to such third parties provided such third parties are subject to

confidentiality obligations similar to those between Service Provider and Customer.

3.4. **Technical Data.** Customer shall not provide to Service Provider any Technical Data as that term is defined in the International Traffic in Arms Regulations (“**ITAR**”) at 22 CFR

120.10. Customer shall certify that all information provided to Service Provider has been reviewed and scrubbed so that all Technical Data and other sensitive information relevant to Customer’s ITAR regulated projects has been removed and the information provided is only relevant to bug reports on Service Provider products.

3.5. **Suggestions/Improvements to Software.** All suggestions, solutions, improvements, corrections, and other contributions provided by Customer regarding the Software or other Service Provider materials provided to Customer shall be owned by Service Provider, and Customer hereby agrees to assign any such rights to Service Provider. Nothing in these Support Terms shall preclude Service Provider from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by Service Provider in the performance of services hereunder.

3.6. **Confidentiality.** Each party (“**Receiving Party**”) agrees to keep confidential all technical, product, business, financial, and other information regarding the business and software programs of the other party (“**Disclosing Party**”), its affiliates, customers, employees, investors, contractors, vendors, and suppliers (the “**Confidential Information**”). For clarity, the term ‘Confidential Information’ does not include any personally identifiable information. Obligations with respect to personally identifiable information (if any) will be set forth in a separate written agreement between the parties. Receiving Party shall at all times to use all reasonable efforts, but in any case no less than the efforts that Receiving Party uses in the protection of its own Confidential Information of like value, to protect Confidential Information belonging to Disclosing Party and agrees not to disclose, give, transmit, or otherwise convey any Confidential Information, in whole or in part, to any third party, except that each party may disclose any Confidential Information to its directors, officers, and employees (and in the case of Service Provider, to its Subcontractors, as well) provided that such directors, officers, employees, or Subcontractors are bound by confidentiality conditions as restrictive as those contained herein. Receiving Party shall not, by authorized or unauthorized access, review, reverse engineer, disassemble, or decompile any Confidential Information. Except as provided hereunder, Receiving Party agrees that it will not use any Confidential Information for its own purpose or for the benefit of any third party and shall honor the copyrights and other intellectual property rights of the Disclosing Party and will not copy, duplicate, or in any manner reproduce any such copyrighted materials. Upon request of Disclosing Party or upon termination of these Support Terms, the Receiving Party shall promptly deliver to the Disclosing Party any and all documents, notes, or other physical embodiments of or reflecting the Confidential Information (including copies thereof) that are in its possession or control. Within seven (7) days of termination of these Support Terms or upon request by the Disclosing Party, the Receiving Party shall return or destroy all Confidential Information of the Disclosing Party. If Confidential Information is destroyed rather than returned, the returning party shall

certify such destruction. Each party acknowledges that any unauthorized disclosure or use of the Confidential Information would cause the other party imminent irreparable injury and that such party shall be entitled to, in addition to any other remedies available at law or in equity, seek temporary, preliminary, and permanent injunctive relief in the event the other party does not fulfill its obligations under this Section.

Compliance with Laws. Both parties agree to comply with all applicable laws, regulations, and ordinances relating to such party’s performance under these Support Terms.

8. **Assignment.** Customer may not assign these Support Terms or transfer any license created hereunder, by operation of law, change of control, or otherwise without the prior written consent of Service Provider. Any purported assignment of these Support Terms in violation of this Section will be deemed void. Service Provider may assign these Support Terms, sub-contract or otherwise transfer any right or obligation under these Support Terms to a third party without the Customer’s prior written consent.

3.9. **Governing Law; Venue.** The laws of the State of Texas, USA govern the interpretation of these Support Terms, regardless of conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (1980) and the Uniform Computer Information Transactions Act (UCITA) are hereby excluded in their entirety from application to these Support Terms. The parties agree that the federal and state courts located in Travis County, Texas, USA will have exclusive jurisdiction for any dispute arising under, out of, or relating to these Support Terms. Mediation will be held in Austin, Texas, USA.

3.10. **Dispute Resolution.**

3.10.1 **Negotiations.** Where there is a dispute, controversy, or claim arising under, out of, or relating to these Support Terms, the aggrieved party shall notify the other party in writing of the nature of such dispute with as much detail as possible about the alleged deficient performance of the other party. A representative from senior management of each of the parties shall meet in person or communicate by telephone within five (5) business days of the date of the written notification in order to reach an agreement about the nature of the alleged deficiency and the corrective action to be taken by the respective parties.

Mediation. Any dispute, controversy, or claim arising under, out of, or relating to these Support Terms and any subsequent amendments of these Support Terms, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach, or termination, as well as non-contractual claims, and any claims with respect to the validity of this mediation agreement (hereinafter the “**Dispute**”) shall be submitted to mediation in accordance with the then-current WIPO Mediation Rules. The language to be used in the mediation will be English.

Opportunity to Cure. Notwithstanding anything contained hereunder, Customer agrees and acknowledges that no dispute resolution or litigation will be pursued by Customer for any breach of these Support Terms until and unless Service Provider has had an opportunity to cure any alleged breach. Customer agrees to provide Service Provider with a detailed description of any alleged failure and a description of the steps that Customer understands must be taken by Service Provider to resolve the failure. Service Provider shall have sixty (60) days from Service Provider’s receipt of

Customer's notice to complete the cure.

3.10.4. Injunctive Relief. The parties agree that it will not be inconsistent with their duty to mediate to seek injunctive or other interim relief from a competent court. The parties, in addition to all other available remedies, will each have the right to initiate an action in any court of competent jurisdiction in order to request injunctive or other interim relief with respect to a violation of intellectual property rights or confidentiality obligations. The choice of venue does not prevent a party from seeking injunctive or any interim relief in any appropriate jurisdiction.

3.10.5. Entire Agreement. The provisions of these Support Terms together with the documents referenced herein constitute the entire agreement between the parties with respect to the subject matter herein and supersede all prior agreements, oral or written, and all other communications relating to the subject matter of the Support Terms. Customer acknowledges and agrees that it is not relying on any agreement, representation, statement or warranty (whether or not in writing) made or given prior to commencement of the Term set out on the Quote, except as expressly provided in these Support Terms, with respect to the Maintenance and Support services provided hereunder.

3.10.6. Modifications. These Support Terms may only be modified or supplemented by a writing manually signed by the authorized representatives of the parties. These Support Terms do not in any way amend any portion of the License Agreement except for the portion of the License Agreement that specifically governs Maintenance and Support activities as to the Software. All other terms and conditions of the License Agreement remain in full force and effect, including, but not limited to, all license provisions.

3.10.7. Severability and Reformation. Each provision of these Support Terms is a separately enforceable provision. If any provision of these Support Terms is determined to be or becomes unenforceable or illegal, such provision shall be reformed to the minimum extent necessary in order for these Support Terms to remain in effect in accordance with its terms as modified by such reformation

3.10.8. Waiver. Any waiver made by either party of any term or condition of these Support Terms shall not be deemed or construed to be a waiver of such term or condition for the future, or any subsequent breach thereof.

3.10.9. Import/Export Laws. The Software, its related technology and services, and Customer's use of the Software and its related technology and services are subject to U.S. export control and sanctions laws and regulations, including, but not limited to, the Export Administration Regulations, 15

C.F.R. Parts 730-774 (the "EAR"), and sanctions imposed or administered by the Department of the Treasury, Office of Foreign Assets Control ("OFAC"), and the Department of State and may be subject to export or import regulations in other countries. Customer warrants and certifies that: (i) Customer is not a citizen, national, permanent resident of, or incorporated or organized to do business in, and is not under the control of the governments of Iran, North Korea, Cuba, Sudan or Syria, or any country to which the United States embargoes goods;

(ii) Customer is eligible under U.S. law to receive exports of the Software, in that it is not included on any list of sanctioned or ineligible parties maintained by the U.S. government, including, but not limited to, OFAC's lists of

Specially Designated Nationals and Blocked Persons ("SDN List"), U.S. Department of Commerce's Table of Denial Orders, the Entity List, or the Unverified List; (iii) Customer will not sell, export, re-export, transfer, use, or enable the use of the Software, its related technology and services, or any other items that may be provided by Service Provider, directly or indirectly: (a) to or for end-use in or by the countries listed in (i) above or any citizens, nationals, or permanent residents of such countries; (b) to or for end-use by any person or entity determined by any U.S. government agency to be ineligible to receive exports, including, but not limited to, persons and entities designated on the lists described in (ii) above; and (c) to or for end-uses prohibited by U.S. export or sanctions laws and regulations, including, but not limited to, activities involving the proliferation of chemical, biological, or nuclear weapons, weapons of mass destruction or the missiles capable of delivering such weapons, and their related technology.

0. Independent Contractor. Each party is and will remain an independent contractor with respect to all performance rendered pursuant to the Support Terms.

1. Headings. The headings of these Support Terms are provided for reference only and will not be used as a guide to interpretation.

2. Notices. All notices under these Support Terms will be in writing and will be considered given as of twenty-four (24) hours after sending by electronic means (such as e-mail as duly provided by the authorized representatives of either party for such purpose) or by overnight air courier service, or upon delivery to the party to whom addressed after deposit in the mail (certified, return receipt requested) to the addresses mentioned on the Quote.

3. Force Majeure. Service Provider shall not be liable to Customer for any delay or failure of Service Provider to perform its obligations hereunder if such delay or failure arises from any cause or causes beyond the reasonable control of Service Provider. Such causes shall include, but are not limited to, acts of God, floods, fire, utility failure, acts of terrorism, war, etc.

4. Conflict. In the event of a conflict between the terms and conditions of these Support Terms, the License Agreement, or a Quote, the terms and conditions of the Quote, these Support Terms, or the License Agreement will prevail, in that order.

5. Restricted Rights. Use of the Software by or for the United States Government is conditioned upon the Government agreeing that the Software is subject to Restricted Rights as provided under the provisions set forth in FAR 52.227-19. Customer shall be responsible for ensuring that this provision is included in all agreements with the United States Government and that the Software, when delivered to the Government, is correctly marked as required by applicable Government regulations governing such Restricted Rights as of such delivery.

6. Survival. The terms of Sections 2 and 3 will survive the term of these Support Terms.

7. Payment. Unless otherwise specified in the Quote, Service Provider may invoice Customer for all fees immediately following the Quote Effective Date and all such fees shall be due and payable within thirty (30) days of such invoice date. Notwithstanding any provision to the contrary,

any and all payments required to be made hereunder shall be timely made, and no payments to Service Provider shall be withheld, delayed, reduced, or refunded if Service Provider has performed its material obligations. Invoices will be sent by electronic delivery unless requested otherwise by Customer, additional fees will apply.

3.10.18 Taxes. The Customer will pay all import duties, levies or imposts, and all goods and services sales, use, value added or property taxes of any nature, assessed upon or with respect to the Master Agreement. In the event that Customer is tax exempt, it shall furnish appropriate documentation to Service Provider to demonstrate such tax exempt status. If the Customer is required by law to make any deduction or to withhold from any sum payable to the Service Provider by the Customer hereunder, then the sum payable by the Customer upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, the Service Provider receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount the Service Provider would have received and retained in the absence of such required deduction or withholding. If the Customer is required by law to make any such deduction or withholding, the Customer shall promptly effect payment thereof to the applicable tax authorities. The Customer shall also promptly provide the Service Provider with official tax receipts or other evidence issued by the applicable tax authorities sufficient to enable the Service Provider to support a claim (if applicable) for income tax credits in the Service Provider's applicable taxable country.

3.10.19. Late Payment Fees. Any late payment will be subject to any costs of collection (including reasonable legal fees) and bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial periods) or at the maximum rate permitted by law, whichever is less.

3.10.20. Non-solicitation. During the Term of these Support Terms and for a period of two (2) years thereafter, Customer agrees not to hire, solicit, nor attempt to solicit, the services of any employee or Subcontractor of Service Provider without

the prior written consent of Service Provider. Customer further agrees not to hire, solicit, nor attempt to solicit, the services of any former employee or Subcontractor of Service Provider for a period of one (1) year from such former employee's or Subcontractor's last date of service with Service Provider. Violation of this provision shall entitle Service Provider to a liquidated penalty against Customer equal to two hundred percent (200%) of the solicited person's gross annual compensation. penalty against Customer equal to two hundred percent (200%) of the solicited person's gross annual compensation.

1. Marks and Publicity. Service Provider and Customer trademarks, trade names, service marks, and logos, whether or not registered ("Marks"), will be the sole and exclusive property of the respective owning party, which will own all right, title and interest therein. Service Provider may: (i) use the Customer's name and/or logo within product literature, press release(s), social media, and other marketing materials; (ii) quote the Customer's statements in one or more press releases; and/or (ii) make such other use of the Customer's name and/or logo as may be agreed between the parties. Additionally, Service Provider may include Customer's name and/or logo within its list of customers for general promotional purposes. Service Provider shall comply with Customer's trademark use guidelines as such are communicated to the Service Provider in writing and Service Provider shall use the Customer's Marks in a manner which is consistent with industry practice. Neither party grants to the other any title, interest or other right in any Marks except as provided in this Section.

2. Country-Specific Terms. The country-specific provisions described in the Country-Specific Terms Addendum located at www.XXXXX.com replace or supplement the equivalent provisions above as noted therein where the Customer is located in the countries identified in the Country-Specific Terms Addendum and in any case where the law of the jurisdiction listed in the Country-Specific Terms Addendum gets applied.