



**ENSOFT, INC.**

3003 West Howard Lane  
Austin, Texas 78728  
*support@ensoftinc.com*

Tel. 512-244-6464

Fax 512-244-6067

## **SOFTWARE MAINTENANCE AGREEMENT**

This Software Maintenance Agreement ("AGREEMENT") is a legal agreement between the licensee described in DEFINITIONS below ("LICENSEE") and Ensoft, Incorporated ("ENSOFT") for the software product ("SOFTWARE") that is also described in DEFINITIONS below.

### **DEFINITIONS**

"LICENSEE" means the user (company or individual) whose name is licensed with a SOFTWARE product from ENSOFT.

"SOFTWARE" means all or any portion of ENSOFT's software technologies licensed to the LICENSEE and delivered on any media or downloaded from any Internet site.

### **1. TERM AND FEE**

The term of this AGREEMENT is specified in the ENSOFT quotation or invoice that was provided to the LICENSEE.

The original purchase or upgrade of SOFTWARE from ENSOFT includes an initial term of AGREEMENT that begins on the date of purchase or renewal and continues for twelve consecutive calendar months. Thereafter, the LICENSEE may continue the AGREEMENT for additional terms at the then current maintenance renewal fee. Should LICENSEE decide to extend this AGREEMENT, the LICENSEE must issue a payment or purchase order in advance of the renewal date at the quoted price.

If LICENSEE wishes to reinstate a lapsed AGREEMENT, the LICENSEE agrees to pay a reinstatement fee as well as the maintenance fee. LICENSEE agrees to pay ENSOFT invoices within thirty (30) days of receipt.

Fees for this AGREEMENT are non refundable.

### **2. TAXES**

All fees under this AGREEMENT are exclusive of, and Customer shall be liable for, and shall indemnify and hold ENSOFT harmless from and against, any and all United States and/or any other country's federal, state, municipal, or other governmental, withholding, excise, sales, use, value added or other taxes, tariffs, custom duties and importing fees ("Taxes").

Taxes shall expressly exclude any United States (i) federal, (ii) state, (iii) municipal, (iv) or other governmental income taxes, franchise taxes, business license fees and other like taxes measured by ENSOFT's income, capital and/or assets.

The total fees for this AGREEMENT is subject to increase by the amount of any Taxes which ENSOFT is required to withhold, collect, or pay so that ENSOFT receives the full amount of the maintenance charges. Any certificate to exempt this AGREEMENT from tax liability or other documentary evidence of statutory exemption shall be obtained by LICENSEE at LICENSEE's expense.

### **3. TERMINATION**

This AGREEMENT may be terminated by either party giving the other party thirty (30) days' notice of intent to terminate prior to the end of the term identified in Article 1 of this AGREEMENT.



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#### **4. SOFTWARE MAINTENANCE AND UPDATE SERVICE**

ENSOFT provides free technical support for installation and usage of SOFTWARE to all users with unexpired term identified in Article 1 of this AGREEMENT.

ENSOFT also provides free periodic SOFTWARE maintenance releases and/or updates to all users with unexpired term identified in Article 1 of this AGREEMENT.

SOFTWARE support and maintenance apply only to unmodified SOFTWARE and commercially released updated versions of the SOFTWARE.

SOFTWARE maintenance and updates are provided only for standard hardware platforms and operating systems supported by ENSOFT as described in the SOFTWARE documentation.

ENSOFT supports users with the installation and maintenance of the SOFTWARE, assistance in solving problems arising from the use of the SOFTWARE and logging of enhancement requests and problems or issues submitted by the user.

LICENSEE may contact Technical Support in any of the following methods:

E-mail: [support@ensoftinc.com](mailto:support@ensoftinc.com)

Phone: +1-512-244-6464 Ext. 2

Hours: 8:30 a.m. to 6:00 p.m. Central time (Monday through Friday, except ENSOFT holidays)

#### **5. EXCLUDED SERVICES**

Maintenance and support services for the following are outside the scope of this AGREEMENT:

- (a) System installation (hardware/software platforms)
- (b) Network configuration support for third party products not sold to the Customer by ENSOFT
- (c) System-level tuning and optimization
- (d) Programming development
- (e) Customization and configuration
- (f) Training
- (g) Engineering judgment or consulting

#### **6. LIMITATION OF LIABILITY AND REMEDIES**

ENSOFT will use commercially reasonable efforts to provide corrections or workaround solutions for any problem or issue reported and determined to be in the SOFTWARE or the documentation at no cost to LICENSEE for the term of this AGREEMENT. While it is ENSOFT's goal to provide an acceptable resolution for incoming problems/issues and incidents, ENSOFT cannot predict a resolution time and is unable to guarantee that all problems or issues can be resolved or addressed.

EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTY, ENSOFT DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT. ENSOFT DOES NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION WILL MEET LICENSEE'S NEEDS, OR THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED.

If ENSOFT fails to fulfill its obligations under this AGREEMENT, LICENSEE's sole and exclusive remedy is the right to terminate this AGREEMENT immediately for the affected SOFTWARE.



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IN NO EVENT SHALL ENSOFT BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE SOFTWARE OR DOCUMENTATION, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT ENSOFT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

### **7. PROGRAM LICENSE AGREEMENT & DISCLAIMER**

Maintenance and support under this AGREEMENT are provided subject to the terms and conditions of the SOFTWARE's "Program License Agreement & Disclaimer" that is provided upon SOFTWARE installation and copied into installed SOFTWARE directory or also available on ENSOFT's website:

<http://www.ensoftinc.com/main/Ensoft%20License%20and%20Disclaimer.pdf>

### **8. APPLICABLE LAWS**

This AGREEMENT is governed by and construed in accordance with the laws of the State of Texas without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property.

### **9. ENTIRE AGREEMENT**

This document constitutes the entire AGREEMENT between ENSOFT and the LICENSEE with regard to the subject matter hereof.

This AGREEMENT supersedes any and all prior discussions and/or representations, whether written or oral, and no reference to prior dealings may be used to in any way modify the expressed understandings of this AGREEMENT.

This AGREEMENT may not be amended or modified unless done so in writing signed by authorized representatives of both parties.