

BITPLANE AG STANDARD TERMS AND CONDITIONS OF SOFTWARE MAINTENANCE SERVICES

PLEASE READ THESE SOFTWARE MAINTENANCE TERMS CAREFULLY. THIS SOFTWARE MAINTENANCE AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND US, BITPLANE A.G..

BY CLICKING THE "AGREE" BUTTON, OR BY CONTINUING TO ACCESS BITPLANE'S SOFTWARE MAINTENANCE SERVICES, YOU ARE AGREEING TO THE TERMS OF THIS SOFTWARE MAINTENANCE AGREEMENT.

1. DEFINITIONS AND INTERPRETATION

- 1.1. In these terms and conditions ("Terms"):
 - "Bitplane" means Bitplane A.G., its employees, subcontractors and sub suppliers and its affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out herein;
 - "Commencement Date" means the date on which the SMA becomes effective as set out in the Quotation;
 - "Customer" means the purchaser of Software Maintenance Services as set out in the Quotation;
 - "Distributor" means a distributor named on the Quotation who is duly authorised by Bitplane to distribute Software Maintenance Services;
 - "Initial Period" means the initial period of twelve (12) months from the date of purchase of the Software;
 - "Licence" means the end user software licence agreement entered into between Bitplane and Customer a copy of which is available via this link: <https://www.oxinst.com/assets/uploads/documents/Bitplane-AG-EULA.pdf>
 - "Software Maintenance Agreement" or "SMA" means these Terms, the Quotation and Order Acknowledgement;
 - "Order Acknowledgment" means the acknowledgement of order issued by Bitplane or the Distributor to the Customer;
 - "Quotation" means a quotation for the provision of Software Maintenance Services issued by Bitplane or the Distributor to the Customer;
 - "Renewal Period" has the meaning given to it in clause 9.2;
 - "Service Fee" or "Maintenance Fee" means the fee payable by Customer to Bitplane or the Distributor for the Software Maintenance Services as set out in the Quotation;
 - "Software" means the Bitplane software to be supported by Bitplane as part of the SMA.
 - "Software Maintenance Services" means the support and training services set out in the Quotation to be provided by Bitplane via a Technical Support Expert (either in person, via telecommunication, or via a screen-sharing session as Bitplane may determine to be appropriate) or to respond to technical and application Customer queries relating to the Software;
 - "Standard Support Hours" means 8.00 am to 6.00 pm Monday to Friday, except on days which are bank holidays in Switzerland or such other European country as may be specified in the Quotation.
 - "Technical Support Expert" means an individual engaged or employed by Bitplane to perform the Software Maintenance Services;
 - "Term" means the Initial Period and any Extended Period.
 - "Update" means a maintenance release, correction, amendment, or update of the Software provided to the Customer as part of the Software Maintenance Services;
 - "Warranty Period" means the period of ninety (90) days from the date of performance of any given Software Maintenance Services.
- 1.2. Clause and appendix headings shall not affect the interpretation of the SMA.
- 1.3. A payment shall be deemed made when credited to the payee's bank account and is cleared funds.
- 1.4. Unless the context otherwise requires, in these Terms words in the singular include the plural and in the plural include the singular, and each gender includes each other gender.
- 1.5. Any words in the Terms following the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.6. English is the authentic text of the SMA and all notices or other communications under or relating to it shall be in writing in English. Any translation will be for guidance only.
- 1.7. Save as otherwise expressly agreed in writing by Bitplane, in the event of any inconsistency in the documents comprising the SMA, the following order of prevalence shall apply: (1) the Quotation; (2) the Order Acknowledgement; and (3) these Terms.
- 1.8. Reference to a "person" includes any individual, partnership, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having separate legal personality.
- 1.9. References to attachments, clauses, recitals, annexes and schedules are of or to the same in the SMA unless otherwise stated.

2. SCOPE OF THE SERVICES

- 2.1. In exchange for the Service Fee, Bitplane shall use its reasonable endeavours to provide the Software Maintenance Services during the Standard Support Hours.
- 2.2. Subject to payment of the Service Fee, the Software Maintenance Services shall apply to the Software and to any Updates which are acquired by Customer during the course of the Licence and which

accordingly becomes part of the software defined as the Software under the Licence.

- 2.3. Bitplane shall from time to time make Updates available to Customer without charge. If Customer fails to acquire and install an Update within one month of Bitplane notifying Customer that such Update is available for installation (or such other longer period as Bitplane may specify), Bitplane shall be under no obligation to make such Update available for any longer period of time and Customer shall no longer be entitled to such Update.
- 2.4. In the event that no Updates are made available during the Initial Period, Bitplane shall provide the next available Update to Customer free of charge following the end of the Initial Period.
- 2.5. Bitplane shall issue Updates of the Software as and when required and in whatever form (including, by way of a local fix or patch of the Software or a temporary by-pass solution) in the absolute discretion of Bitplane.
- 2.6. Bitplane shall supply Customer with any documentation necessary relating to any Updates acquired by Customer.
- 2.7. Bitplane may, on prior notice to Customer, make changes to the Software Maintenance Services, provided such changes do not have a material adverse effect on Customer's business operations.
- 2.8. If any variation in the Software Maintenance Services or the Maintenance Agreement is agreed or is required for compliance with any applicable law, regulation or safety recommendation, Customer shall pay such additional amount as is fair and reasonable and Bitplane shall have reasonable additional time to perform any of its obligations set out in the SMA.
- 2.9. If any request for the Software Maintenance Services leads to the requirement for services outside the scope of the Software Maintenance Services, Bitplane shall inform Customer and provide a quotation for any additional charges that may apply for such additional services.
- 2.10. It is the responsibility of the Customer to download and install any Updates via Bitplane Portal when notified by Bitplane. If Customer chooses to disable the version update notification, the Customer shall check for the latest available version on Bitplane Portal, and Bitplane shall have no liability to Customer if Customer fails to do so.

3. SERVICE FEE AND PAYMENT

The following provisions of this clause 3 do not apply to Software Maintenance Services purchases made by the Customer from a Distributor. The terms of payment for Software Maintenance Services purchases made by the Customer from a Distributor shall be provided in the Distributor's Quotation or as otherwise provided by the Distributor.

- 3.1. Subject to any applicable Quotation, the Service Fee shall exclude value added tax and any other applicable taxes and duties. Unless costed for in any applicable Quotation, Bitplane may make reasonable additional charges for complying with any special requirements of Customer. Unless Customer provides Bitplane with appropriate tax exemption certificates, such additional charges shall be billed to Customer as a separate line item on each invoice.
- 3.2. Bitplane shall provide Customer with an invoice detailing the Service Fee and Customer shall pay the Service Fee within thirty (30) days of the date of such invoice unless stated otherwise in the Quotation or on the invoice.
- 3.3. Bitplane shall invoice Customer for the Service Fee annually in advance.
- 3.4. Payment shall be made in either (i) United States Dollars (USD); (ii) Euros (EUR); (iii) Great British Pounds (GBP); (iv) Japanese Yen (JPY); or (v) Swiss Francs (CHF) as set out in any applicable Quotation, clear of any banking transaction charges and without deduction, set off or counterclaim.
- 3.5. Bitplane shall notify Customer ninety (90) days prior to the expiry of the Initial Period or any Extended Period of any increases in the Service Fee greater than five percent (5%) for the next Extended Period.
- 3.6. Time of payment is of the essence of every SMA. Without limiting Bitplane's remedies, if payment is overdue, Customer shall indemnify Bitplane against any legal fees and other costs of collection and (as well after as before judgment) shall pay to it a sum equal to any loss suffered by Bitplane arising from exchange rate fluctuations and interest on such sum and on the amount overdue at four per cent (4%) above the base rate from time to time of Barclays Bank PLC calculated from the date payment fell due until the date of actual payment (or such lesser amount as is the maximum rate permissible by law) and Bitplane may cancel the SMA and any other contracts and suspend performance of the Software Maintenance Services and suspend deliveries to Customer.
- 3.7. Any payment which would fall due later than it would have done but for delay caused by Customer shall be deemed to fall due when, but for Customer's delay, it might reasonably be expected to have fallen due. Bitplane may delay or withhold performance under the SMA until Customer has made any payment or opened any letter of credit or established any other payment arrangements which are due to be made, opened or established and the time for performance shall be extended accordingly.

4. CUSTOMER'S RESPONSIBILITIES

- 4.1. Customer shall ensure that the operating system on the computer on which the Software is installed is kept up-to-date. Customer

acknowledges that failure to comply with this clause 4.1 may result in Updates being incompatible with Customer's system and Bitplane is under no obligation to ensure that the Software continues to work on any out-of-date operating systems.

- 4.2. Customer shall grant full access (including remote access) to and use of its systems, equipment, premises, facilities, the Software and any necessary information to enable Bitplane to perform the Software Maintenance Services during Standard Support Hours and upon reasonable notice from Bitplane at any other time.
- 4.3. Where the Services are to be performed at the Customer's premises, Customer shall ensure that any such premises to which Bitplane's employees or agents have access for provision of Software Maintenance Services fully comply with health and safety regulations and best practices and Customer will not expose such persons to unnecessary risk or danger to personal safety. Customer shall ensure that Bitplane's personnel are made aware of all relevant safety procedures and regulations.
- 4.4. Customer shall ensure that its employees and agents comply with all reasonable instructions made by Bitplane's employees and agents in the course of provision of the Software Maintenance Services or to enable Bitplane to limit any damage to either party, including complying with safety procedures.
- 4.5. Customer warrants that any site where performance of the Software Maintenance Services is to take place is in all respects suitable for the safe and lawful performance of the Software Maintenance Services.
- 4.6. Customer shall provide all reasonable utilities (including heat, light, electricity and ventilation) and telecommunications required for the performance of the Software Maintenance Services.
- 4.7. Customer shall take all precautions to protect its data and shall ensure that a regular back-up arrangement for such data is implemented before and during the provision of the Software Maintenance Services. Customer shall be responsible for restoring any lost or corrupted data unless such loss is caused by the negligence or wilful default of Bitplane. Where such loss is caused by the negligence or wilful default of Bitplane, Bitplane's liability shall be limited to the reinstatement cost, where reinstatement is possible, of all data proven to have been lost or irretrievably corrupted unless such loss or corruption has resulted from the failure of the Customer to take the above mentioned precautions to protect and perform regular back-ups of its data.
- 4.8. Customer warrants that it does and undertakes that it will comply with any applicable data protection legislation from time to time in force.
- 4.9. Customer shall reimburse the reasonable expenses of any employees or representatives of Bitplane who are required to travel from Bitplane's premises to Customer's premises at its request during the provision of the Software Maintenance Services.
- 4.10. Customer shall indemnify Bitplane against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against Bitplane as a result of:
 - 4.10.1. Customer's failure to comply with any of its obligations under this clause 4; or
 - 4.10.2. the negligence or wilful misconduct of Customer.

5. EXCLUSIONS FROM SERVICES

- 5.1. Bitplane shall have no obligation to provide the Software Maintenance Services where faults arise from:
 - 5.1.1. misuse of or damage to the Software from whatever cause (other than any act or omission by Bitplane), including failure or fluctuation of electrical power;
 - 5.1.2. failure to maintain the necessary environmental conditions for use of the Software;
 - 5.1.3. use of the Software in combination with any equipment or software not provided by Bitplane or not designated by Bitplane for use with any Update which forms part of the Software to which the Software Maintenance Services apply, or any fault in any such equipment of software;
 - 5.1.4. relocation or installation of the Software by any person other than Bitplane or a person acting under Bitplane's instructions (any migration of the Software by Bitplane shall be subject to the terms of Bitplane's license migration agreement);
 - 5.1.5. any breach of Customer's obligations under the SMA howsoever arising or having the Software maintained by a third party;
 - 5.1.6. any Update not authorised by Bitplane; or
 - 5.1.7. operator error.
- 5.2. Unless otherwise agreed in writing by Bitplane, there shall be excluded from the Software Maintenance Services and/or an additional fee will be payable to Bitplane for:
 - 5.2.1. the servicing of any Software not described in any applicable Quotation; or
 - 5.2.2. any services not described in the Quotation.
- 5.3. Customer shall reimburse Bitplane against any costs incurred by Bitplane responding to claims caused by operator error or incorrect application or other default of Customer or other third party.
- 5.4. In the provision of Software Maintenance Services, Bitplane cannot guarantee the attendance of any particular individual as a Technical Support Expert and reserves the right to replace any Technical Support Expert with an appropriate alternative individual at any time.
- 5.5. Unless otherwise agreed in writing, the Technical Support Expert shall not be required to perform any services other than the Software Maintenance Services.

- 5.6. If any appointment with an Technical Support Expert is cancelled with less than twenty four (24) hours' notice, Bitplane may charge its standard rates for its times and expenses in respect of such appointment.

6. WARRANTY

- 6.1. Bitplane warrants that the Software Maintenance Services will be performed in accordance with all applicable laws and regulations and with reasonable skill and care.
- 6.2. If within the Warranty Period Bitplane has received notice from Customer that any Software Maintenance Services were not performed in accordance with the SMA, Bitplane shall at its option either re-perform any non-compliant Software Maintenance Services free of charge or refund to Customer the price paid for such Software Maintenance Services provided that:
 - 6.2.1. Customer gives written notice of the non-performance in question (with reasonable relevant information) to Bitplane as soon as reasonably practicable and within the Warranty Period;
 - 6.2.2. none of the exclusions set out in clause 5 apply;
 - 6.2.3. payment in full of all sums due in respect of the Software Maintenance Services has been made.
- 6.3. The Warranty Period for any Software Maintenance Services re-performed pursuant to clause 6.1 shall be the remaining period, if any, of such initial Warranty Period.

7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 7.1. All inventions, designs, copyrights and processes and all and any other intellectual or industrial property rights whether or not registered or registerable and all goodwill associated thereto relevant to the Software Maintenance Services and all specifications, designs, programs or other material issued by or on behalf of Bitplane shall, as between Bitplane and Customer, remain the absolute property of Bitplane. Customer shall not acquire any right or interest in the same except, if the Quotation so requires, Bitplane shall grant or procure the grant of a licence to use materials created specifically for Customer in the course of the Software Maintenance Services.
- 7.2. Customer acknowledges that all specifications, design, programs or other material including know-how, plans, drawings and price lists issued by or on behalf of Bitplane and any other information received by it during or as a result of the Software Maintenance Services are confidential and agrees not to use them or any other confidential information of Bitplane for any purpose (other than the purpose for which the information was disclosed) nor reproduce them in any form nor disclose them to third parties.

8. EXCLUSION AND LIMITATION OF LIABILITY

- 8.1. In order to keep the Service Fee as low as possible and as Customer is better able than Bitplane to quantify loss which it may suffer from a breach of the SMA and to insure accordingly, Customer agrees to Bitplane limiting its liability as set out in this clause 8, subject always to clause 8.9.
- 8.2. Subject to clause 8.8, if Bitplane has properly re-performed the Software Maintenance Services in accordance with clause 6.2, it shall have no further liability in respect of such default in the Software Maintenance Services unless proper performance is not possible in which case Bitplane's liability shall be limited to refunding any monies paid in respect of such defective Software Maintenance Services.
- 8.3. Customer acknowledges that Bitplane's obligations and liabilities in respect of the Software Maintenance Services are exhaustively defined in these Terms and that, subject to clause 8.8, such express obligations are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to the Software Maintenance Services including, as to the condition, quality, performance or fitness for any purpose of the Software Maintenance Services or any part of them.
- 8.4. All dates supplied by Bitplane for the delivery or the Updates or the provision of Software Maintenance Services shall be treated as approximate only. Bitplane shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 8.5. Subject to clause 8.9, Bitplane shall under no circumstances be liable to Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, revenue, benefit, anticipated savings or goodwill, loss of use of any asset, loss of data, business interruption, management costs or third party liability, any loss which procedures and precautions implemented by the other party (or which would generally be implemented by a person exercising a degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a reasonably and appropriately skilled and experienced person in the same or similar circumstances) could have prevented or reduced, or for any indirect or consequential loss arising out of or in connection with the SMA, or for any claim against Customer by any other party, even if Bitplane has been advised of the possibility of such loss or damages.
- 8.6. Subject to clause 8.9, the aggregate liability of Bitplane (whether in contract, tort, breach of statutory duty or otherwise) for all breaches under or non-performance of its obligations or contemplated by the SMA shall not exceed a sum equal to one and a half times the Service

- Fee save that this clause 8 shall not limit or exclude any liability of Bitplane which cannot be effectively excluded in law.
- 8.7. Without prejudice to the foregoing, the provision of the Software Maintenance Services is not a guarantee that any Software will operate uninterrupted or without error.
- 8.8. Any liability of Bitplane under any warranty, indemnity or other obligation stated or confirmed in the Quotation is subject to all exclusions and limitations in these Terms.
- 8.9. Nothing in the SMA shall limit or exclude the liability of Bitplane for (i) death or personal injury caused by its negligence; (ii) fraud or fraudulent misrepresentation; or, (iii) any other liability which may not be excluded or limited by law.
- 8.10. Bitplane shall not be responsible or liable for:
- 8.10.1. any loss, damage, cost or expense arising from any mistake, defect, virus, poor quality of or inaccuracy in any program, electronic communication or other materials specified or supplied by or on behalf of Customer, all of which shall be for the sole account of Customer which shall indemnify Bitplane against any liability in relation to the same; or
- 8.10.2. any failure to perform, or delay in performing, any Software Maintenance Services which is caused or contributed to by a breach by Customer of its obligations under the SMA and Bitplane shall be entitled to rely on all information and materials provided by Customer without verifying the same.
- 8.11. If Bitplane obtains performance of any of the Software Maintenance Services by any of its associates or any sub-contractor, such associate or sub-contractor shall be entitled to the benefit of this clause 8 and to enforce it on its own behalf.

9. TERM AND TERMINATION

- 9.1. The SMA shall begin on the Commencement Date and, unless terminated earlier in accordance with this clause 9, shall continue for the Initial Period.
- 9.2. Bitplane and Customer may agree to extend the Initial Period for any number of one year periods thereafter (each being a "Renewal Period") for an additional fee.
- 9.3. During any Renewal Period, either Bitplane or Customer may terminate the SMA in whole or in part on sixty (60) days' notice in writing to the other, such notice expiring on the expiry of such Renewal Period.
- 9.4. During the Term, Bitplane may terminate the SMA in whole or in part and every other contract with Customer if:
- 9.4.1. Customer commits a material breach of any term of the SMA (other than failure to pay any amounts due under these Terms) or the Licence, or repeatedly breaches any term of the SMA or the Licence; or
- 9.4.2. Customer fails to make payments to Bitplane under any contract as they fall due or Customer otherwise breaches any such contract and the breach or non-payment is not remedied within seven (7) days of notice from Bitplane; or
- 9.4.3. Customer is, or is deemed to be, insolvent or suspends payment or performance of its obligations or threatens to do so, or Bitplane has reasonable grounds for believing it will fail to discharge its obligations under any contract or steps are taken to propose any composition, scheme or arrangement involving Customer and its creditors or obtain an administration order or appoint any administrative or other receiver or manager in relation to, or put in force any legal process against, Customer or any of its property or enforce any security over Customer's property, or repossess any goods in its possession or wind up or dissolve Customer, or sequester its estate or dissolve it or file a petition in bankruptcy or other relief from creditors; or
- 9.4.4. control of Customer passes from the present shareholders, owners or controllers to other persons whom Bitplane in its absolute discretion regards as prejudicial to its reasonable interests; or
- 9.4.5. in the reasonable opinion of Bitplane, Customer has ceased or threatened to cease to trade; or
- 9.4.6. where Customer is an individual or partnership, he or any partner dies or any steps are taken with a view to making a bankruptcy order against him or any partner; or

- 9.4.7. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 9.4.3 to 9.4.6 above.

10. FORCE MAJEURE

Bitplane shall not be liable for any failure to perform its obligations hereunder by reason of any cause whatsoever beyond its reasonable control (including trade dispute; fire, flood or act of god; armed conflict, riot or civil commotion; terrorist act, equipment or supply difficulties; any rule or action of any public authority; transportation delays; refusal or delay in granting any necessary licence or permit; epidemic illness; failure by suppliers; compliance with any law or government order, rule, regulation or direction; failure or interruption of internet communications or telecommunications, criminal or malicious damage to networks, systems or premises; or any repudiatory event by Customer). In such circumstances, Bitplane may terminate the SMA whereupon Customer shall pay a sum equal to the costs to Bitplane of performing the SMA and Bitplane's liability shall be limited to repayment of any sums paid in respect of unperformed Software Maintenance Services less such costs.

11. GENERAL

- 11.1. Any notice given to a party under or in connection with the SMA shall be in writing and shall be: (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (ii) sent by email to the address set out for the party in the Quotation.
- 11.2. Any notice shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt; (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service; or (iii) if sent by email, at 9.00 am on the next business day after transmission.
- 11.3. Any provision invalid or unenforceable for any purpose in the SMA shall be severed for that purpose but otherwise remain valid and enforceable and shall not affect the validity of the remainder of the SMA.
- 11.4. Variations of the SMA shall be effective only if agreed in writing by authorised representatives of both parties and will then prevail over these Terms.
- 11.5. No indulgence, forbearance, partial exercise of any right or remedy or previous waiver shall prejudice any rights or remedies. Remedies shall be cumulative and no choice of remedy shall preclude any other remedy.
- 11.6. Customer warrants that the use of any information, components, specifications or designs which it has supplied or arranged to be supplied to Bitplane will not infringe the intellectual property rights of any third party and Customer shall indemnify Bitplane against all liability in relation to the same.
- 11.7. Customer shall not assign, mortgage, charge, sub-let or otherwise dispose of the SMA or any rights thereunder in whole or in part.
- 11.8. Customer acknowledges that Bitplane may use sub-contractors to perform the Software Maintenance Services. Bitplane shall at all times remain responsible for the acts and omissions of its sub-contractors.
- 11.9. The SMA shall be binding upon and inure to the benefit of the successors and assigns of Customer.
- 11.10. A person who is not a party to the SMA has no right to enforce any term of the SMA.
- 11.11. The SMA shall be governed by and construed and interpreted in accordance with laws of Switzerland as applied in the Canton of Zurich and all disputes arising out of or in connection with the Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.
- 11.12. Save for the Licence, the SMA sets out the entire agreement and understanding of the parties relating to the subject matter thereof and supersedes all prior agreements, understandings or arrangements relating thereto.