

Esti-mate Software Ltd

STANDARD

SOFTWARE MAINTENANCE (Support) AGREEMENT

for



Programs

**Esti-mate Software Ltd
PO Box 280 Witney ,Oxfordshire
OX29 0XJ England.**

THIS AGREEMENT is applicable from the date of “Purchase”

BETWEEN

(1) **ESTI-MATE SOFTWARE LTD** of PO Box 280 Witney, Oxfordshire, OX29 0XJ, England.

And:

(2) **THE COMPANY** whose details are stated on the Purchase Invoice to the (“Customer”).

RECITALS:

(A) By virtue of the Agreement (as hereinafter defined) Esti-mate Software Ltd agree to licence the Programs to the Customer

NOW IT IS HEREBY AGREED as follows:

1 Definitions

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

the “**Agreement**” means the Software Licence Agreement dated on the “Purchase Invoice”. made between Esti-mate Software Ltd and the Customer:

the “**Commencement Date**” means the date on which this Agreement shall become effective as specified in the Schedule;

the “**Current Release**” means the Release from time to time accepted by Customer under this Agreement;

the “**Initial Period**” means the initial period of this Agreement as specified in the Schedule:

the “**Maintenance Charge**” means the periodic charge for the Maintenance Services specified in the Schedule as increased from time to time pursuant to Clause 3:

the “**Maintenance Services**” means the maintenance services to be provided by Esti-mate Software Ltd pursuant to Clause 5:

the “**Object Code**” means the Esti-mate product program code (as amended from time to time) for the Esti-mate suite of programs

the “**Program Documentation**” means the operating manuals, user Instructions, technical literature and all other related materials in PDF form supplied by Esti-mate Software Ltd to the Customer for aiding the use and applications of the Current Release: and

“**Release**” means any improved version of the Licensed Programs made available to Customer by Esti-mate Software Ltd pursuant to Clause 5.1

- 1.2 Words and phrases used herein and not defined shall have the same meaning as in the Agreement.

2 Services To Be Performed

Esti-mate Software Ltd hereby agrees to provide the Maintenance Services for the Customer upon the terms and conditions hereinafter contained.

3 Charges and Payment

- 3.1 In consideration of the Maintenance Services the Customer shall pay the Maintenance Charge periodically in advance as specified in the Schedule. The Maintenance Charge shall be paid without prior demand. All payments shall be made in the manner specified in the Schedule.
- 3.2 Any charges payable by Customer hereunder in addition to the Maintenance Charge shall be paid within 30 days after the receipt of Esti-mate Software Ltd invoice therefore
- 3.3 Esti-mate Software Ltd shall be entitled, after the expire of the period of one year after the Commencement Date, to increase the Maintenance Charge annually, by giving to Customer not less than 90 days' prior written notice, provided that any such increase shall not exceed five per cent per annum (or such higher percentage as may be recorded in the UK cost of living Index from time to time).
- 3.4 The Maintenance Charge and any additional charges payable under this Agreement are exclusive of Value Added Tax which shall be paid by Customer at the standard rate and in the manner for the time being prescribed by law.
- 3.5 If any sum payable under this Agreement is not paid by the due date then (without prejudice to Esti-mate Software Ltd's other rights and remedies), Esti-mate Software Ltd reserves the right to charge interest on such sum on a day to day basis (as well after as before any judgement) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 4 per cent above the base rate of Barclays Bank plc (or such other UK Clearing Bank as Esti-mate Software Ltd may nominate) from time to time in force compounded quarterly.

4 Duration

This Agreement shall commence on the Commencement Date, shall continue for the initial period and shall remain in force thereafter unless or until terminated in accordance with Clause 9.

5 Maintenance Services

- 5.1 During the continuance of this Agreement Esti-mate Software Ltd shall provide Customer with the following maintenance services:
- 5.1.1 Error Correction
- (a) If the Customer shall discover that the Current Release fails to fulfil any part of the Specification then the Customer shall within 14 days after such discovery notify Esti-mate Software Ltd in writing (in the manner specified by Esti-mate Software Ltd) of the defect or error in question and provide Esti-mate Software Ltd (so far as Customer is able) with a documented example of such defect or error.

- (b) Esti-mate Software Ltd shall thereupon correct promptly such defect or error. Forthwith upon such correction being completed Esti-mate Software Ltd shall deliver to Customer the corrected version of the Object Code of the Current Release in machine readable form together with appropriate amendments to the Program Documentation specifying the nature of the correction and providing instructions for the proper use of the corrected version for the Current Release. Esti-mate Software Ltd shall provide the Customer with all assistance reasonably required by the Customer to enable the Customer to implement the use of the corrected version of the Current Release.
- (c) The foregoing error correction service shall not include service in respect of:
 - (i) defects or errors resulting from any modifications of the Current Release made by any person(s) other than Esti-mate Software Ltd;
 - (ii) any, enhanced version of the Licensed Programs other than the Current Release; and
 - (iii) incorrect use of the Current Release or operator error.
- (d) Esti-mate Software Ltd shall make an additional charge (including expenses) in accordance with it's standard scale of charges and expenses from time to time in force or any services provided by Esti-mate Software Ltd:
 - (i) at the request of the Customer but which do not qualify under the aforesaid error correction service by virtue of any of the exclusions referred to in paragraph (c) above; or
 - (ii) at the request of the Customer but which Esti-mate Software Ltd finds are not necessary
- (e) If the Customer shall discover that the Program Documentation does not provide adequate or correct instruction for the proper use of any facility or function set out in the Specification then the Customer shall notify Esti-mate Software Ltd in writing of the fault in question within 14 days after such discovery. Esti-mate Software Ltd shall thereupon promptly correct the fault and provide the Customer with appropriate amendments to the Program Documentation.

5.1.2 New Releases

- (a) Esti-mate Software Ltd shall promptly publish to the Company Web site any improved version of the Licensed Programs which Esti-mate Software Ltd shall make available to it's licensees. Esti-mate Software Ltd shall provide with such publication an explanatory memorandum specifying not only the nature of the improvements but also any adverse effects which the new Release may be expected to have including in particular any expected degradation in performance. While it is acknowledged by the Customer that the explanatory memorandum may not be equivalent to a detailed specification of the new Release it shall contain sufficient information to enable the Customer to judge whether the new Release will be appropriate to the Customer's requirements.

5.1.3 Advice and Support

Esti-mate Software Ltd will provide the Customer with such technical advice and support by telephone, modem, or mail as shall be necessary to resolve Customer's difficulties and queries in

using the Current Release and as more particularly described in the Schedule. All new Release Software will be made available immediately on the Company Web site www.estimate.co.uk for download by the Customer. Alternatively, new Release Software will be sent on request by CD but will incur postage and package charges

6 Customer's obligations

6.1 During the continuance of this Agreement the Customer shall:

- (a) use only the Current Release;
- (b) co-operate fully with Esti-mate Software Ltd's personnel in the diagnosis of any error or defect in the Current Release or the Program Documentation;
- (c) make available to Esti-mate Software Ltd free of charge all information facilities and services reasonably required by Esti-mate Software Ltd to enable Esti-mate Software Ltd to perform the Maintenance Services including without limitation computer runs, core dumps, and printouts; and
- (d) provide such telecommunication facilities as are reasonably required by Esti-mate Software Ltd for testing and diagnostic purposes at the Customer's expense.

6.2 On execution of this Agreement the Customer shall be deemed to have accepted the Programs as the Current Release for the purposes of this Agreement.

7 Proprietary rights and licence

The Current Release and all parts thereof and the copyright and other intellectual property rights of whatever nature therein are and shall remain the property of Esti-mate Software Ltd.

8 Confidentiality

Each party shall treat as confidential all information obtained from the other pursuant to this Agreement and shall not divulge such information to any person(s) (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this Clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to this Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this Clause. The foregoing obligations as to confidentiality shall survive any termination of this Agreement.

9 Termination

9.1 Notwithstanding anything else contained herein, this Agreement may be terminated:

- (a) by Esti-mate Software Ltd forthwith on giving notice in writing to the Customer if the Customer shall fail to pay any sum due under the terms of this Agreement (otherwise than as a consequence of any default on the part of Esti-mate Software Ltd) and such sum remains unpaid for 14 days after written notice from Esti-mate Software Ltd that such sum has not been paid (such notice to contain a warning of Esti-mate Software Ltd's intention to terminate): or

- (b) by either party forthwith on giving notice in writing to the other if the other commits any material breach of any term of this Agreement (other than any failure by customer to make any payment hereunder in which event the provisions of paragraph (a) above shall apply) and (in the case of breach capable of being remedied) shall have failed. Within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate).
- 9.2 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 9.3 Any termination of this Agreement (howsoever occasioned) shall not of itself affect the Customer's right to continue to use the Programs and/or Current Release and the Program Documentation in accordance with the provisions of this Agreement.

10 Assignment

- 10.1 The Customer shall not be entitled to assign, sub-license or otherwise transfer the Agreement whether in whole or in part save that the Customer shall be entitled to assign the entire benefit of the Agreement (but not part thereof) to any company which is from time to time a holding company or a subsidiary of the Customer or a subsidiary of any such holding company (as those expressions are defined in Section 744 Companies Act, 1905) subject to such company entering into a written undertaking with Esti-mate Software Ltd to comply with the terms and conditions hereof and provided that at the time of such assignment such company shall be entitled to the exclusive possession of the equipment (or such substituted equipment as is permitted under Clause 9.3(b) for its own use and benefit.
- 10.2 Esti-mate Software Ltd shall not be entitled to assign, sub-licence otherwise transfer this agreement in whole or in part without the prior written consent of the assignee entering into a written undertaking with the Customer to comply with the terms and conditions of this agreement including the provisions of this clause.

11 Waiver of remedies

No forbearance, delay or indulgence by either party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

12 Entire agreement

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties other than the Agreement and constitutes with the Agreement, the entire Agreement between the parties. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instruction signed by a duly authorised representative of each of the parties.

13 Notices

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient as set out in this Agreement or such other address as the

recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by letter or by facsimile transmission and shall be deemed to have been served if by hand when delivered, if by post 48 hours after posting and if by facsimile transmission when despatched.

14 Headings

The headings to the Clauses of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

15 Law

This Agreement shall be governed by and construed in accordance with the Laws of England

16 Disputes

Any dispute which may arise between the parties concerning this Agreement shall be determined by the English Courts and the parties hereby submit to the exclusive jurisdiction of the English Courts for such purpose.

ESTI-MATE SOFTWARE LTD

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THE SCHEDULE

THE COMMENCEMENT DATE

The date on which the Programs as purchased by the Customer under the terms of the Agreement.

A THE INITIAL PERIOD

The period of one year from the Commencement Date.

B THE MAINTENANCE CHARGE

The current maintenance charge will be shown on all invoices delivered to the Customer.

UK £ for the first year of this Agreement payable in advance. UK £ for each year of this Agreement after the first year payable each year or if higher than fee which equates the retail price index multiplied by £ in advance.

C METHOD OF PAYMENT

By Cheque, Credit Card or BACS Transfer to Barclays Bank plc, Witney

Account Name **ESTI-MATE SOFTWARE LTD**

Account Nr **33867692**

Sort Code **20:97:48**

D ADVICE AND SUPPORT

1. Telephone Service

The Customer will be entitled to telephone Esti-mate Software Ltd from Monday to Friday (except on non-business days in the UK) between the hours of 9:30 am to 1:00 pm and 2:00 pm and 5:00 pm (English Time). Esti-mate Software Ltd will provide guidance to the Customer concerning the daily operations of the Current Release and how a defect or error may be bypassed. Esti-mate Software Ltd will compile problem reports and information of a technical nature from the Customer. The maximum response time from the Customer's call until Esti-mate Software Ltd provides a response to the notification of defect or error in the Current Release requiring support shall be four hours (reckoned within the said opening hours) and Esti-mate Software Ltd shall whenever reasonably possible endeavour to provide an immediate response and solution.

2. On Site Support

On-site support is not included in this Agreement. However, if the Customer requires a representative of Esti-mate Software Ltd to attend the Customer's premises then Esti-mate Software Ltd will attend promptly upon receipt of an official order covering the costs.