

(Company Name) Software Maintenance Agreement

1. ADDRESSES AND COMMUNICATIONS

(Company Name) Software

Address:

City, State, Zip

Telephone:

Email:

2. DEFINITIONS

- A. 'Maintained Software' means the registered copy of the (Company Name) Software Product licensed to you and designated by you on the Maintenance Registration Form. If the licensee of the Maintained Software is a corporation or other entity, the "you" as used in this Agreement refers to that corporation or entity.
- B. 'Support Contact' means the person authorized by you on the Maintenance Registration Form to communicate with (Company Name) to request and receive the Maintenance Services. The Support Contact may be you, your employee, or an agent or consultant of your company or organization who provides services directly to you as the Licensee of the Maintained Software. The Support Contact should be knowledgeable about how the Maintained Software is being used and about the computer/operating system on which Maintained Software is executed.
- C. 'Discrepancy' means a defect in the distribution media or material difference between the operation of the Maintained Software and the description of the operation of the Maintained Software as provided in current end-user documentation provided for the Maintained Software by (Company Name).
- D. 'Correction' means replacement distribution media or corrective code or documentation which rectifies a Discrepancy as described above. (Company Name) may, at its discretion, modify the end-user documentation to (i) remove inaccuracies in the documentation, or (ii) describes changes, modifications or improvements made to the Maintained Software. 'Correction' includes, but is not limited to, workarounds, support releases, update disks, immediate correction disks, component replacements and patches.
- E. 'Priority 1 Discrepancy' means a Discrepancy in the Maintained Software which causes substantial downtime of the system, or which causes data corruption, or which otherwise renders the Maintained Software unusable. Discrepancies given this priority have no viable workaround or avoidance procedure.
- F. 'Priority 2 Discrepancy' means a significant Discrepancy in the Maintained Software which results in inconvenience to users of the Maintained Software, but for which a workaround or avoidance procedure is available
- G. 'Priority 3 Discrepancy' means a Discrepancy in the Maintained Software which can easily be avoided or detoured. For example errors in the documentation receive this priority.

H. 'Agreement' means these Terms and Conditions of (Company Name) Software Maintenance and Priority Support Program.

3. APPLICABILITY OF (COMPANY NAME) SOFTWARE LICENSE AGREEMENT

This Agreement and all software, documentation and media provided under it is subject to all the terms and conditions of the (Company Name) End User Software License Agreement which exists between you and (Company Name), including the Disclaimer of Warranty and Limitation of Liability.

4. MAJOR UPGRADE RELEASE

(Company Name) Software intends at least once per calendar year to prepare a major upgrade release of the Maintained Software which will contain a new set of software and may contain replacements for all or some of the existing documentation set, but cannot promise to do so. If prepared, this major upgrade release will be sent to you under this Agreement without additional charge.

5. FIXES TO REPORTED DISCREPANCIES

In response to a confirmed Discrepancy in the Maintained Software, (Company Name) Software shall use reasonable efforts to provide on an as-needed basis at its discretion a Correction in the form of a workaround, support release, update disk, immediate correction disk, or electronic transfer equivalent, component replacement, patch, major upgrade release, or other suitable form, but (Company Name) Software cannot guarantee to do so. When provided under this Agreement, such Correction will be provided without additional charge. (Company Name) Software reserves the right to discontinue Maintenance Services without notice on a past workaround, support release, update disk or immediate correction disk, or electronic transfer equivalent, component replacement, patch or other form of Correction after a subsequent major upgrade release, support release, or update disk or electronic transfer equivalent containing a Correction of the Discrepancy is available.

6. ACCESS TO (Company Name) Software product support staff

(Company Name) Software Product Support Staff are available via email to give you assistance and advice on (Company Name) Software products or to receive Discrepancy reports, during normal working hours at our West Coast office listed above. We may allocate your support request based on availability of staff and experience to a named individual at our discretion. Occasionally the Product Support Staff will not be available while they are attending group training sessions or company meetings. You may also use regular or overnight delivery services or telephone once assigned to a named individual to communicate with our Product Support staff.

The (Company Name) Software web site 'www.adtools.com' also provides you with a wide variety of information and sample code. In some cases the web site will be used as a delivery mechanism for some Corrections.

Our Product Support staff will, with your assistance if necessary, investigate a suspected Discrepancy by attempting to reproduce it after receiving your Discrepancy report under Section 8 below.

7. Software not covered by this agreement

- A. Altered or modified Maintained Software
- B. Any combination of Maintained Software and other software not covered by this Agreement.
- C. A Release of Maintained Software for which Maintenance Services has been discontinued.
- D. Discrepancies caused by your negligence or fault.
- E. Discrepancies resulting from hardware malfunction.
- F. Discrepancies that do not significantly impair or affect the operation of the Maintained Software.
- G. Maintained Software used on a computer or operating system other than that specified by you and accepted by (Company Name) Software on the Maintenance Registration Form.

8. YOUR RESPONSIBILITIES

You agree to report all suspected Discrepancies through your Support Contact to the (Company Name) Software Product Support staff. Reports will include the minimum length source code sufficient for (Company Name) Software to reproduce the suspected Discrepancy. Failure to provide this minimum length source code may cause delays in responding to the Discrepancy. An operational script may be sufficient if the problem is not of a language nature.

You agree to use reasonable efforts to assist (Company Name) Software in its efforts to find Corrections to confirmed Discrepancies reported by you.

You agree to install and use the newest release or change disk for the Maintained Software sent to you by (Company Name) Software within thirty (30) days of receipt. In all contacts with (Company Name) Software Product Support, you agree to provide the product serial number given to you by (Company Name) Software, along with your name and the name and address of the company or individual contracted for the maintenance.

9. ADDITIONAL SERVICES AND CHARGES

(Company Name) Software may offer additional services such as training and consulting under separate agreements. Such services can be performed at a site and time mutually agreeable. These services are normally charged on a time and materials basis including expenses and are subject to availability.

(Company Name) Software reserves the right to charge for services outside of the range of normal support services. Such services considered outside of the range of normal support services are (1) debugging application coding errors in a customer's application, (2) debugging problems in non-(Company Name) Software supported

products, or in combinations of (Company Name) Software supported and non-supported products where the problem occurs in the non-(Company Name) Software product, and (3) other cases where it is judged highly likely that the suspected problem is not the responsibility of (Company Name) Software.

When a situation occurs where a reported problem is likely to fall outside of the range of supported services, you will be advised of the potential of incurring charges to have (Company Name) Software work on the problem. An estimate of the cost of the additional services will be prepared and delivered to you, by appropriate means, for your approval and agreement. Should we find that the problem is, indeed, caused by a supported product, no charges will be incurred. However, if it is proven that the problem is not the responsibility of (Company Name) Software, you will be charged for the time spent at the rates specified in the estimate/service agreement. Should you not agree that the requested service falls out of the bounds of supported services, your (Company Name) Software sales person will be your representative at (Company Name) Software to mediate the issue for you.

(Company Name) Software, upon prior notice, reserves the right to charge for unusual or excessive support person time or telephone expenses in connection with the Maintenance Services provided under this Agreement. Reasonable shipping, handling, media and user documentation charges in connection with the provision of the upgrades and service shall be payable by you.

10. PAYMENT

The annual Maintenance Fee must be paid in advance. The Maintenance Fee is as determined in the (Company Name) Software Price List as of the Maintenance Expiration date.

11. TERM AND TERMINATION

This Agreement will be effective and services provided hereunder will commence as of the completion of (Company Name) Software; 1) acceptance of payment of the appropriate Maintenance Fee or initial product purchase with Maintenance; 2) registration of this Agreement on receipt of the Maintenance Registration Form you have submitted; and 3) ascertaining proof of proper license for the Software designated on the Maintenance Registration Form. The services provided hereunder would cease on the last business day of the month of the Maintenance Period which is one year from the commencement of services under this Agreement. The Maintenance Period commences as determined by (Company Name) Software as of the date of product purchase with maintenance, maintenance renewal or maintenance commencement, as appropriate. (Company Name) Software may change the Maintenance Fee without notice which fee shall become effective upon renewal of this Agreement.

This Agreement will remain in effect unless terminated upon fifteen (15) days written notice by either party by reason of any violation of the terms and conditions of this Agreement.

(Company Name) Software may or may not notify you of the impending Maintenance Expiration Date. It is your responsibility to exercise the option to renew maintenance prior to the Maintenance Expiration Date. To register for a further year of maintenance under this Agreement, simply pay the current maintenance fee prior to the Maintenance Expiration Date and you will continue to receive maintenance services.

If you allow your maintenance to expire, you must purchase an upgrade to the current version of the product in order to register for a new maintenance period. If you have previously received the current upgrade version, the start of the new maintenance period will be backdated to begin on the date that the previous maintenance period expired. You must then fill out a Maintenance Registration Form and return it to (Company Name) Software at the address denoted in section 1.

You will then receive an invoice for the appropriate amount. Simply pay the invoice and your maintenance will be renewed. If you do not have a Maintenance Registration Form, then call or email your (Company Name) Software sales person and one will be sent to you. (Company Name) Software reserves the right to withdraw maintenance services on any or all Maintained Software or other products, and to alter the prices, terms, and conditions of the Maintenance Program, in advance of any maintenance renewal. Any such withdrawal or alterations will amend the Maintenance Program between You and (Company Name) Software as of your next renewal date.

12. MISCELLANEOUS

You may not assign this Agreement to a third party without the prior written consent of (Company Name) Software. This Agreement and the (Company Name) Software End User Software License Agreement shall be the only Agreements between (Company Name) Software and you with respect to the Maintained Software. They cannot be modified except in writing and with the approval of both parties. These Agreements supersede all prior agreements, oral or written, relating to the Maintained Software. The laws of California shall govern the validity of these Agreements, the construction of their terms and the interpretation of the rights and duties of the parties.