



SOFTWARE USE AND MAINTENANCE CONTRACT

(hereinafter also referred to as the "Contract")

Contract Number: _____

between

hereinafter referred to as the "Customer"

and

XPLM Solution, Inc.
1900 West Park Drive, Suite 280D
Westborough, MA 01581
USA

hereinafter referred to as "XPLM"

- hereinafter jointly referred to as the "contracting parties"

A. General Part

1 Content of the contract

The present contract is a software use and maintenance contract regarding the transfer of standard software and maintenance services. Individual contracts for these services are generally concluded upon the placement of the individual order by the Customer (in writing, by fax or by email) and acceptance of the order by XPLM (in writing, by fax or by email). Agents, reseller or distributors may be intermediaries. The individual contract may be supplemented by a software use and maintenance schedule. XPLM has the right to either perform contractual services itself or to hire subcontractors to render all or part of the contractual services.

2 Applicable documents

- 2.1 The regulations set forth in this software use and maintenance contract and those in the relevant individual contract as well as any exhibits referred to therein shall apply exclusively to the performance of the contract. No other contractual terms, including but not limited to possible general terms and conditions of contract or business of the contracting parties do become part of this contract. This also applies to quotations, orders, order confirmations or other documents in whatsoever form, whether in writing, by fax or by email, even if not objected by the other contracting party.
- 2.2 This Contract, together with the relevant individual contract as well as any exhibits referred to therein and any software use and maintenance schedule, if applicable, contains the entire agreement and understanding of the contracting parties hereto with respect to the matters herein set forth, and all prior negotiations and understandings relating to the subject matter of this Contract are merged herein and are superseded and cancelled by this.

3 Order of validity

The provisions of this software use and maintenance contract, of the individual contracts and any exhibits thereof shall apply in the following descending order of priority:

- › Individual contract and/or software use and maintenance schedule (if applicable);
- › Software use and maintenance contract;

4 Commitment

The conclusion of the software use and maintenance contract obliges neither the Customer to place any orders nor XPLM to accept any orders.

5 Requirement of written form

Any additions and changes to this software use and maintenance contract and to the individual contracts, including to any exhibits referred to therein, must be executed in writing to become effective. This also applies to a waiver or a cancellation of this requirement of written form.

6 Definitions

The following definitions apply to this software use and maintenance contract and to all individual contracts concluded under this software use and maintenance contract:

- 6.1 Customizing means adjustments of the standard software to the needs or operational requirements of the Customer including, if necessary, changes in source code, but excluding changes to program structures;
- 6.2 Individual contract is the generic term for the contract which is generally concluded upon the placement of the individual order by the Customer and acceptance of the order by XPLM for the permanent transfer of software and maintenance of software. The individual contracts are supplemented by the software use and maintenance contract and if applicable by software use and maintenance schedule;
- 6.3 Third-party software means software of third-party manufacturers, which is used by the Customer;
- 6.4 Hardware environment means hardware specified upon conclusion of the contract, in particular devices or machines, including optional accessories, which are required by the Customer in order to use the software;
- 6.5 Configuration means coordinated parameterization of function variables and control data of system components to the agreed hardware and software environment in order to ensure the software's functionality in the Customer's hardware and software environment defined in the relevant individual contracts;
- 6.6 Software use and maintenance schedule is the exhibit which may supplement this software use and maintenance contract concluded between XPLM and the Customer and which regulates the technical details of the transfer of software and maintenance of software;
- 6.7 Parameterization means the adaptation of system components to the requirements of the Customer in order to ensure the software's operability in accordance with the Customer's hardware and software environment defined in the relevant individual contracts and if applicable in the software use and maintenance schedule, without modifying the source code;
- 6.8 Patch (also referred to as "hot or bug fix") means the removal of a fault and/or a disorder in the software, without expanding the software's functions;
- 6.9 Software use and maintenance contract means this contract, consisting of a general Part A, which includes regulations that are applicable to both, the transfer of software pursuant to Part B and the software maintenance services pursuant to Part C, and of Part B - Transfer of Software - and Part C - Software Maintenance -, which each contain general regulations on the transfer of software and related maintenance services and which are specified more detailed in the individual contracts and if applicable in the software use and maintenance schedule on software transfer and software maintenance.
- 6.10 Release means a new software development level, which is significantly different from the previous Version regarding to its scope of functionality and/or data range;

- 6.11 Software means the standard software transferred to the Customer in line with this software use and maintenance contract and the individual contracts concluded there under;
- 6.12 Software environment means all programs, program modules and tools that are specified by XPLM as a requirement for the use of the software;
- 6.13 Update means a bundle of several defect rectifications and/or disorder removals as well as minor functional improvements of the software;
- 6.14 Version means a new software development level that contains functional expansions as compared to the previous software.
- 6.15 CAD-Seat licenses: the number auf CAD-Seat Licenses that have to be bought depends on the maximum number of CAD workstations that can be used in the Customer's company. Usually this is the sum of single-user and network licenses a Customer has bought from the CAD supplier. If applicable the number is increased by the number of OEM CAD licenses the Customer has bought which can access a connector license (e.g. as a part of a CAM application) and the number of CAD workstations of a third party, where the software is used, too.
- 6.16 Workstation license: a workstation license can be installed and used on a personal computer clearly determined by it's MAC address. The number of required licenses depends on the number of workstations where the software is installed. This is independent of which employee uses the software at which time. If a Customer has to replace a certain workstation, the software has to be uninstalled before it can be installed and used on a new workstation.
- 6.17 Named user license: a named user is defined as a certain user who clearly has been determined by is name and who solely is authorized to use the software. This is independent of the fact of whether the user is using the software at a certain time or not. The number of required licenses depends on the number of required users.
- 6.18 Concurrent user license: with the Concurrent User License model the maximum number of simultaneous users of the XPLM Software is defined. The software can be installed on any number of workstations, but the simultaneous use by users or background processes is limited by the number of licenses bought. For instance, a concurrent license for XPLM integrations is used if the integrated application (e.g. CAD) is started simultaneously with the XPLM interface. That is if a XPLM interface add-in or a XPLM library is used at the start of the integrated application (e.g. CAD). After the termination of the use of the integrated application, the license is automatically released.
- 6.19 Site license: a site license is obtained for one operating site and can be used by any employee and from any workstation at that place of business, regardless of the number of employees or workstations.
- 6.20 Company license: a company license is bought per company (= legal entity) and can be used from every workstation, every employee, every location and every business premises regardless of their number.
- 6.21 PLM-Seat license: the number auf PLM-Seat Licenses that have to be bought depends on the maximum number of PLM users that can be used at the same time in the Customer's company.

- 6.22 Application server license: an application server license is exclusively valid for a certain server installation of a certain application.
- 6.23 Subscription/rental license: a subscription or rental license is a temporary license to use the software, limited to the contractually stipulated term. A subscription/rental license may also contain a temporary service (e.g. software maintenance), limited to the contractually stipulated term.

7 Defects of quality and title and other impairment of performance

- 7.1 Any claims by Customer concerning a defect in Software quality and title must be reported to XPLM in writing and an adequate grace period (of at least 30 days) for investigation and remediation must be given. In warranty cases, XPLM shall be entitled to a reasonable number of attempts to remedy a defect covered by warranty. For defects in quality, XPLM can opt to remedy the defect either by fixing the error or by supplying a debugged or modified program version or other debugged or modified work result. For defects in title that are the result of a valid third-party claim, XPLM can opt to either defend itself against or satisfy such claims, or to change the related Software or other work results such that the Software or other work results can be used in accordance with the Contract without violation of such claimed third party rights. However, a claim for removal or remedy of minor defects (i.e, a defect that does not significantly limit Customer's use of the Software) in quality and title shall not exist or be available to Customer.
- 7.2 If XPLM does not provide its further contractual performance (e.g. in the context of software maintenance) or does not provide them in due time or not properly, the Customer shall initially grant XPLM an opportunity of providing the performance properly within a reasonable period defined in writing (of at least 30 days).
- 7.3 The proper rectification of defects of quality by XPLM is subject to the proviso that the Customer notifies XPLM of any defects immediately in writing, by fax or by email including a detailed description of the error and cooperates in the rectification of defects. A prerequisite for the rectification of defects of title is that the Customer notifies XPLM immediately in writing of any third party claims made and supports XPLM to a reasonable extent in defending such rights.
- 7.4 XPLM will also support the Customer in trouble-shooting if it has not been established that the defects are due to deliveries and services of XPLM. If trouble-shooting does not reveal that the errors occurred are due to XPLM's deliveries and services, XPLM may invoice any expenses incurred by it to the Customer.
- 7.5 Any Customer claims for defects in quality and title shall lapse if the items supplied under the Contract were modified without the consent of XPLM and the Customer fails to prove that the defect is not related thereto. This shall also apply if the Customer engages third parties for modification of the Software without the approval of XPLM. Furthermore, XPLM shall not be liable under warranty if the Customer uses the items supplied under the Contract in violation of the contractually agreed rights of use under this Contract.

- 7.6 The limitations period for bringing any claims for defects in quality or title for Software or services shall be 90 days after the Software or applicable services was first delivered to Customer, except in a case of proven willful intent by XPLM; provided that if deliveries of Software and services require acceptance, the claims limitations period shall commence following such acceptance. The period of limitation for defects in maintenance services pursuant to Part C shall be 90 days from the end of this software use and maintenance contract and/or the software use and maintenance schedule, if applicable, whichever occurs later.
- 7.7 The claims for defects in quality and title apply equally to third-party software. The limitation period for defects in quality and title for third-party software shall be 90 days. The provisions of paragraph 7.6 shall apply for the commencement of the limitation period.
- 7.8 Representations in test programs, product and service descriptions and brochures, and similar items do not constitute warranted properties or guarantees. Any warranted properties or guarantees both require express written confirmation by XPLM.

8 Liability Limitations

- 8.1 XPLM will use commercially reasonable efforts to provide corrections or solutions within the scope of the warranty at no cost to Customer.
- 8.2 If and to the extent that damage is due both to a fault of XPLM and to a fault of the Customer, the Customer shall be responsible for its contributory fault.
- 8.3 XPLM shall be liable for damages only if:
- › they are direct damages caused by XPLM's breach of an essential contractual obligation hereunder, which shall mean an obligation the fulfillment of which is a prerequisite for the proper performance of this Contract and on the fulfillment of which the Customer may reasonably and regularly rely;
 - › based on injury to life, body or health caused by XPLM; or
 - › caused by XPLM's gross negligence or willful intent.
- 8.4 If XPLM is liable for the breach of an essential contractual obligation for any reason other than gross negligence, willful intent, or injury to life, body or health, XPLM's liability shall (i) be limited in amount to the amount paid by Customer to XPLM hereunder during the immediately preceding 90 days period, and (ii) not include any liability for any indirect, consequential, incidental or exemplary damages or lost profit.
- 8.5 EXCEPT FOR THE EXPRESS LIMITED WARRANTY; XPLM DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND; EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. XPLM DOES NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION WILL MEET CUSTOMER'S NEEDS.
- 8.6 IN NO EVENT SHALL XPLM BE LIABLE TO CUSTOMER FOR LOST PROFITS; INDIRECT INCIDENTAL; OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS CONTRACT OR USE OF THE SOFTWARE; HOWEVER CAUSES; ON ANY THEORY OF LIABILITY.

- 8.7 Notwithstanding anything in the foregoing to the contrary, XPLM shall be liable for data losses (except in case of willful intent) caused by Customer's authorized use of the Software only if the Customer has performed appropriate system checks and data backups at regular intervals (at least once a day) and in any such event liability shall be limited to the reasonable recovery costs.

9 Secrecy and data protection

- 9.1 The contracting parties agree to keep confidential all information, documents, and data of which they gain knowledge in the performance of the Contractual deliveries and services and to not make such information, documents, and data available to any third parties outside of the scope of the Contract. The contracting parties shall instruct their employees who are involved in the implementation of the project about the confidentiality obligation. The Customer shall implement suitable measures to ensure that unauthorized third parties do not have access to the Software provided under the Contract or other documents. The contracting parties will, to the extent permitted by law, oblige their employees who are involved in the execution of this software use and maintenance contract and the individual contracts concluded there under to maintain secrecy. However, XPLM shall always be entitled to utilize any knowhow gained in the performance of the Contract in its future business activities.
- 9.2 XPLM and the Customer shall observe data protection laws and regulations that are applicable to them. The Customer shall implement adequate safety measures to ensure that XPLM cannot accidentally access databases and systems not required for the performance of the Contract and troubleshooting. The Customer has sole responsibility for complying with data protection regulations. In particular, the Customer shall ensure that XPLM does not have access to personal data that is collected, processed or used by the Customer, irrespective of whether or not it is personal data about employees or other personal data of end Customers. The Customer shall further procure, on its own initiative, any consents from its employees, business partners, and other relevant third parties required for access to personal data by XPLM in connection with the performance of the Contract, including troubleshooting, in particular with a view to access (via remote data transfer or on site) to the respective databases. The Customer shall indemnify XPLM against any third-party claims based on inadequate consents.
- 17.1 If and to the extent that access to personal data during the provision of services under this software use and maintenance contract and the individual contracts concluded there under cannot be prevented, especially if XPLM cannot render its contractually owed services in any other way, the Customer will notify XPLM accordingly. In this case, the contracting parties will make the necessary arrangements in relation to data protection if and to the extent that collection, processing and use of the respective personal data is not permitted by law, another legal provision or a consent of the person involved.
- 17.2 The Customer will indemnify XPLM from and against all third-party claims due to impermissible collection, processing and use of personal data.

10 Term of the contract and termination

- 10.1 This software use and maintenance contract is concluded for an unlimited term. Software maintenance services listed in the software use and maintenance schedule or an individual contract may be terminated at the end of a given annual term upon at least three months written notice prior to the end of the respective annual term by either Party. If such prior notice is not timely provided, the maintenance services shall be renewed for subsequent annual terms of one year each. At the option of XPLM, the year of use can be switched to the calendar year. In this case, the term of the maintenance service and the related period of notice are not based on the year of use, but on the calendar year. As far as rights of software use are agreed upon timely limited (“Subscription/Rental”) software maintenance automatically ends with the expiration of the rights of software use.
- 10.2 As far as rights of Software use are not on an annual Subscription/Rental basis, the respective right of use may only be terminated for a material default or other reason expressly noted below. As far as rights of Software use that are on a Subscription basis, the respective right of use ends with the expiration of the applicable Subscription term.
- 10.3 This Contract may also be terminated for a material default as noted below, provided that before the Contract can be so terminated, the defaulting Party must be provided a written notice by the non-defaulting Party, with such notice indicating the reason for the intended termination and offering a grace period of at least thirty (30) days for remediation of the claimed default. A material default shall mean any of the following:
- › Commencement of insolvency proceedings against the assets of one of the contracting parties, which proceedings are not stayed or dismissed within 60 days of the filing thereof.
 - › Customer is in default of payment by more than thirty (30) days;
 - › Changes in the contractual terms and conditions of third-party software makers, as a result of which XPLM is no longer able to perform the contractually agreed services or provision of Customer’s use of the Software;
 - › Any other material breach of the terms of this Contract, including without limitation, the conditions and restrictions on Software use and the confidentiality and data protection provisions in Section 9.
- 10.4 If for any reason XPLM is at any time during the period that this Contract is in effect prohibited by a third party with superior rights in the Software from granting rights to use the Software or to provide the related Software maintenance services, XPLM will inform the Customer promptly. XPLM will then make reasonable efforts to achieve with such third party an amicable solution that allows the Customer to continue to use the Software and to continue to receive the Software maintenance services. In case that no such resolution can be achieved within a period of thirty (30) days after the notice is provided to the Customer, XPLM shall be entitled to terminate the provision and availability of Software to Customer and Software maintenance services with a further notice of at least seven (7) days.
- 10.5 If this Contract is terminated for any reason or the rights to use the Software are otherwise revoked, the Customer must return all Software and copies thereof, and delete and destroy any related programs and access information it has stored. The Customer must also give XPLM written confirmation that all Software, including any copies, has been returned, deleted or destroyed.

10.6 Each notice of termination must be given in writing in order to be effective.

11 Place of jurisdiction and applicable law

The place of jurisdiction and venue for all disputes concerning this Contract shall be the state and federal courts that are within the state of XPLM's principal place of business in the United States. This Contract shall be governed by the laws of the State of Delaware, without regard to its conflicts of laws provisions. In the event of litigation, the prevailing party shall be entitled to recover any or all reasonable attorneys' fees and other costs incurred in the enforcement of the terms of this Contract, or for the breach thereof.

12 Expiration of Claims

Notwithstanding anything to the contrary contained herein, and in order to limit the survival period for commercial law claims for breach of contract under seal, it is the intent of the parties hereto that no party to this agreement may bring a claim for a breach of contract arising from or in connection with this agreement after the date that's the first (1) year anniversary of the individual order of Customer accepted by XPLM.

13 Severability clause

In case that any of the provisions of this Contract or, if applicable, of the software use and maintenance schedule should become invalid or unenforceable, the remaining provisions shall remain unaffected.

B. Transfer of Standard Software

14 Subject matter of the contract

14.1 XPLM provides the Customer with the standard software as defined in detail upon conclusion of the contract in line with the following provisions. The Customer may use the standard software in accordance with the provisions of this Part B and with the software use and maintenance schedule, if applicable.

14.2 XPLM transfers to the Customer the software pursuant to the provisions in the individual contract:

- › as download possibility or stored on a data carrier (CD-ROM, DVD);
- › the user manual stored on a data carrier (CD-ROM, DVD) or as download;
- › the installation instructions, irrespective of whether the standard software is provided as a download or as a data carrier;
- › by installation on site at the Customer by XPLM.

The Customer is not entitled to be provided with any source codes. In the absence of any stipulations to the contrary, the software is provided in the most recent version.

15 Copyrights and rights of use

- 15.1 The software and the user manual are protected by copyrights. Other than the limited use rights granted to Customer hereunder, with respect to the Software (the “Software”) provided or made available to Customer by XPLM, including solution concepts, documentation, instructions, and support portal contents, all rights therein, and in particular copyrights and other rights of use, belong solely to XPLM as between the contracting parties. For third-party software, the provisions in 15.10 shall apply.
- 15.2 The Customer shall receive a simple, non-exclusive, non-sublicensable and non-transferable right of use pursuant to the provisions below, to the provisions as agreed upon individually or in the software use and maintenance schedule and to the types of licenses as agreed upon individually or in the software use and maintenance schedule, which shall be unlimited. In the case of a subscription/rental license, the Customer shall receive a simple, non-exclusive, non-sublicensable and non-transferable right of use pursuant to the provisions below, to the provisions as agreed upon individually or in the software use and maintenance schedule and to the types of licenses as agreed in the software use and maintenance schedule, which shall be limited to the duration of the contract as agreed individually or in the software use and maintenance schedule.
- 15.3 If the performance of the Contract yields copyrightable work results (e.g. software, specifications, customizing, support portal contents, or other solutions), the Customer shall be granted the limited, non-exclusive, non-sublicensable and non-transferable right to use these for its internal business. Any further types of use or utilization shall not be permitted, and the Customer shall not be permitted to distribute any of the work results. The exclusive rights remain with XPLM.
- 15.4 Software, including solution concepts, documentation, instructions, and support portal contents, may be used only at the Customer's place of business as agreed upon in the proposal, the acceptance of the order and/or the software use and maintenance schedule and pursuant to the type of license that has been agreed upon and only for Customer's place of business purposes. Any other use requires the prior written consent of XPLM. Any other types of use or possibilities of use are prohibited, in particular any translation, processing, arrangement, decompilation, modifications or use with or for any third parties.
- 15.5 The Customer may conduct a change to another hard- or software environment if and as far as such a change is supported by the Software provided. However, the Customer may not claim such a change if the Software provided does not support the other hard- or software environment. If the Customer aims to conduct a change of the Software provided to another hard- or software environment, the Customer has to inform XPLM in written form and by detailed description of the hard- and software environment that the Customer aims to change to. An e-mail does not meet the requirements of written form in this regard. On the basis of this description, XPLM examines if a change to the other hard- or software environment is possible and informs the Customer respectively. If such a change is possible then XPLM will deliver a respective license-key to the Customer. The generating of such a license-key is free as far as this is feasible with reasonable effort. In case of older versions XPLM is entitled to invoice the effort separately in accordance with the respective valid pricelist of XPLM. Any further effort for the change of the Software provided to another hard- or software environment such as customizing, parameterization, configuration, installation or other change related services has to be remunerated separately by the Customer. Depending on the scope of the expected change related services such services can be made conditional on the concluding of a new contract.

- 15.6 Any use of the Software by affiliates of the Customer shall be permitted only in accordance with the type of license pursuant to the individual agreement and beyond this only if XPLM has specifically granted such rights. Use of the Software for the operation of a data processing center for third parties is generally not permitted unless the contracting parties have agreed differently, e.g. in the software use and maintenance schedule.
- 15.7 Copies are permitted only for backup purposes. Backup copies must be identified as such and marked with a copyright notice for XPLM.
- 15.8 The Customer is not entitled to be provided with any source codes.
- 15.9 The use of the Software is restricted to the specific quantities (e.g., concurrent users, workstations, modules used) as described in the individual contract or the software use and maintenance schedule by the type of license. XPLM has the right to use a license manager application (including by means of remote access) to check the scope of Customer's use of the Software at any time. If XPLM finds out that the Customer is using Software, including solution concepts, documentation, instructions, and support portal contents, beyond the agreed scope, XPLM shall have the right to bill the Customer for the difference between the remuneration paid and the remuneration that would otherwise have been required for the actual scope of use. XPLM also reserves the right to assert further rights and remedies as a result of unauthorized Software use.
- 15.10 For third-party software, the exclusive right of use remains with the owner. XPLM grants the Customer a non-exclusive, non-transferable, perpetual right to use the third-party software. In the case of a subscription/rental license, the customer shall receive a simple, non-exclusive, non-sublicensable and non-transferable right to use the third-party software limited to the duration of the contract as agreed upon individually or in the software use and maintenance schedule. The Customer has no right to rent or sublicense the software in any way, to make it available or render it in public wired or wireless or to make it available to third-parties against payment or free of charge.

16 Fees and payment

- 16.1 The fees for the transfer of the software and granting the rights of use are defined in the individual contract, plus applicable VAT.
- 16.2 The fees are due and payable without any deductions within 14 days from delivery of the software or provision of the software for downloading as well as receipt of the invoice.
- 16.3 If the Customer defaults on payment, XPLM shall have the right to charge default interest at a rate of the lesser of 1.5% per month or the maximum rate allowed under applicable law. XPLM reserves the right to assert further remedies as a result of any such default. The Customer may offset payments only against claims that are undisputed or have been established by a court order.

C. Software Maintenance

17 Scope of services

17.1 XPLM provides the maintenance services set forth below exclusively for the software specified in detail, e.g. in the software use and maintenance schedule or the individual contract, and the hardware and the software environment specified therein.

17.2 XPLM provides maintenance services in the following manner:

- › Hotline
- › Error rectification
- › Provision of a support system
- › Delivery of standard updates
- › Maintenance of upwards compatibility with third-party software connected via XPLM-supplied interfaces, as long as permitted by the licensing conditions and the API of software manufacturers involved

17.3 XPLM provides error rectification services as follows:

- a) In cases of errors pertaining to error category 1 (see Section 17.4), XPLM shall start to work on fixing the error within a response time of eight hours after the error has been reported (in writing, by e-mail or phone) by the system administrator or his/her substitute. Response times only count during regular business hours (Monday to Thursday from 9 a.m. to 5 p.m., Friday from 9 a.m. to 4 p.m. (EST), not including statutory holidays observed in the state of XPLM's principal place of business in the United States. XPLM reserves the right to adjust its business hours in line with changing market requirements, in which case it shall advise the Customer in advance. Errors shall be fixed via remote data transfer by delivering a corrected software version. However, if it turns out during error analysis and troubleshooting that there are no faults in the XPLM software, XPLM can bill the time expended at regular market rates (hourly rates).
- b) Errors with a different priority level shall be fixed through a patch or in a new version. Patches only contain error fixes; new versions may also contain expanded functions in line with the modules activated for the Customer. Patches and versions are made available to the Customer for retrieval. Subject to mutual agreement between the contracting parties, a corrected software version may also be supplied in advance in case of serious category 2 errors without acceptable work-around. A claim for removal of minor errors does not exist.
- c) The hotline for questions (by phone, fax or e-mail) in case of software errors is available to the Customer's system administrator and his/her substitute during business hours (see Section (a) above). It neither includes application questions covered during training nor consulting services for product-specific application possibilities.

- 17.4 The Customer is not obligated to install the newest available version or any patches that are made available. However, XPLM will render the services referred to in Section 17 only for the newest version and one version prior to that. For older versions, the Customer can access the hotline only in accordance with Section 17.2(c). Any warranty obligations on the part of XPLM shall not apply to errors in Software versions other than the latest version generally made available by XPLM, if the related errors have been rectified in a newer version or a patch provided to the Customer but the Customer did not install the new version or patch. Subject to such limitations, XPLM shall use reasonable efforts to address Customer questions regarding older versions. New versions can only be adopted in the order in which they were released. If the Customer skips one or more versions - instead of installing the versions in sequence - this may cause additional expenditure which must be borne by the Customer, and will be billed by the hour at XPLM's regular market rates for such services.
- 17.5 XPLM distinguishes the following categories for software errors:
- | | |
|-------------------|--|
| Error category 1: | Errors that lead to system stoppage, data loss, data corruption, or regular data inconsistencies, and which do not allow for the Software to be used in a manner that is reasonable from a business perspective; |
| Error category 2: | Serious errors, that do not rise to the level of error category 1, without an identified work-around; serious errors are errors that cause a significant restriction in usability, or errors that cause significant deviations in functionality from the functionality described in the documentation, if this results in major restrictions on regular business operations; |
| Error category 3: | Serious errors with an identified work-around; |
| Error category 4: | Other errors not covered above; |
| Others: | Requests (no errors). |
- 17.6 Errors can only be addressed if they are reported immediately, and if a detailed description of the error as well as any other information, data, and documentation required by XPLM in order to analyze and address the error are provided in a timely manner. Errors must be reproducible in the Software. If this is not the case, XPLM reserves the right to bill the Customer for any additional expenditure resulting therefrom.
- 17.7 At the discretion of XPLM, errors may be addressed either on site, via remote data transfer or by sending to Customer (including via e-mail) a solution to fix the error or bug. The Customer shall set up remote access following the instructions provided by XPLM and ensure that it is properly maintained for the entire duration of the Contract. If XPLM is not granted remote access, XPLM reserves the right to bill the Customer for any additional expenditures resulting therefrom.
- 17.8 XPLM reserves the right to carry out any maintenance service with the aid of the producer.
- 17.9 Unless specifically agreed otherwise in writing, XPLM shall not be obligated to provide maintenance for Customer-specific adaptations made by the Customer or XPLM. The Customer shall only receive standard updates, and the Customer shall be responsible for backup and migration of any customizations. XPLM shall support the Customer as mutually agreed upon in writing between Customer and XPLM and bill the Customer for this support based on XPLM's market rates and actual expenditures.

17.10 Software maintenance also includes the preservation of upward compatibility with third-party software tied in through interfaces supplied by XPLM. This, however, does not apply for new releases issued by the Software makers, if these present one or more of the following characteristics:

- › Change in the first digit of the official release number (e.g. from 2.9 to 3.0);
- › Change in the Software architecture;
- › Fundamental change in the programming interface of the third-party software;
- › Loss of compatibility with the previously used hardware platform;
- › The software core of the third-party software is new or has been modified in a manner that is reasonably regarded as a significant set of modifications.

If, in the above-mentioned cases, it is technically possible to maintain or restore upward compatibility, XPLM shall provide the corresponding services at the Customer's request for an additional fee. If the scope of such support or the related fees and expenditures are reasonably regarded by XPLM as being material in nature, XPLM may also require a separate contract to be concluded for such support before XPLM is obligated to provide any such services.

17.11 Software maintenance shall begin when the Software is delivered or made available for download. The software use and maintenance schedule for software acquired by the Customer shall be amended accordingly in each case, if applicable.

17.12 Where software maintenance services must be accepted by the Customer, such services shall be deemed accepted if the Customer has not reported any errors within 10 business days after the services were carried out.

18 Errors in third-party software and hardware, operating errors

18.1 XPLM will also support the Customer in error analysis if it has not been established that the defects are software defects. If it turns out during error analysis that the errors occurred with the Customer are not due to the software or other services provided by XPLM under this software use and maintenance contract and the individual contracts concluded there under, XPLM may charge separately the expenses incurred for error analysis pursuant to XPLM's price list to the Customer. This applies, in particular, to operating errors, errors in third-party software and hardware or other disorders in the system environment. In addition, XPLM is prepared - if feasible for XPLM at commercially reasonable efforts and technically feasible - to provide support for the rectification of errors that are not due to deliveries and services provided by XPLM. XPLM may charge these support services separately to the Customer, based on the applicable man-day rates pursuant to the price list of XPLM.

18.2 XPLM reserves the right to carry out any maintenance service with the aid of the producer.

19 Copyrights and rights of use

The provisions of clause 15 shall apply accordingly to the rights in the software versions and to other work results that can be protected by copyrights. The Customer is not entitled to receive any source codes.

20 Fees and payment

- 20.1 The fees for software maintenance are indicated in the proposal, the individual contract or the software use and maintenance schedule, plus applicable VAT. Any services that are provided on a subscription/rental basis ("Subscription/Rental") and software maintenance are billed annually in advance. XPLM may move the billing date to the beginning of the calendar year. Except as expressly allowed under Section 20.3 below, invoices must be paid without any deductions and within 14 days of receipt of the invoice.
- 20.2 Other services are generally billed monthly and are due and payable without any deductions within 14 days from receipt of the invoice by the Customer.
- 20.3 XPLM's prices are net prices and subject to VAT at the statutory rate in effect at the respective time.
- 20.4 If the Customer defaults on payment, XPLM shall have the right to charge default interest at a rate of the lesser of 1.5% per month or the maximum rate allowed under applicable law. XPLM reserves the right to assert further remedies as a result of any such default. The Customer may offset payments only against claims that are undisputed or have been established by a court order.
- 20.5 If the Customer purchases additional software and licenses, the individual contract and/or the software use and maintenance schedule will be adapted accordingly.
- 20.6 XPLM is entitled to adjust the remuneration for software maintenance under this Contract once per year with effect to the beginning of the subsequent new calendar year by advance written notice of at least three months. The adjustment will take account of changes in economic conditions. The adjustment shall become effective with the beginning of such subsequent year unless the Customer elects to terminate the Contract at the end of the respective calendar year; provided that such termination election must be made within four weeks after receipt of the adjustment notice from XPLM and provided further that contract termination because of this reason is only permissible if a remuneration increase amounts to more than 2% of the Contract remuneration immediately prior to such notice.

21 System administrator, cooperation of the Customer

- 21.1 The Customer shall designate a system administrator and a representative for all technical questions in connection with the execution of the software use and maintenance schedule. The system administrator and his/her representative are entitled to give error or disorder notifications.
- 21.2 Due to the complexity of software systems, the Customer shall be required to cooperate; this shall be an essential contractual obligation. The Customer shall provide all information required for the performance of the contractually agreed services to XPLM in due time and on Customer's own initiative, and also otherwise cooperate at no charge in the performance of the Contract.

21.3 The Customer shall perform a data backup at regular intervals, i.e. at least once per day as well as prior to any operations performed by XPLM on existing computer systems. XPLM shall inform the Customer with sufficient advance notice of any such operations by XPLM; provided that a service request by Customer (including one related to the reporting of any error by Customer) shall not require any such advance notice by XPLM.

XPLM

Contracting Party

(Authorized Signature)

(Authorized Signature)

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____