

# VISUAL COMPONENTS SOFTWARE MAINTENANCE AGREEMENT (v. 201801)

This Software Maintenance Agreement (“SMA”) shall apply to any and all software maintenance services to be provided by Visual Components (VISUAL) to the Maintained Software, as hereinafter defined, SMA is always supplementary to and conditional upon the Licensee’s valid Visual Components EULA.

## 1. DEFINITIONS

‘**Maintained Software**’ means the registered copy of the Visual Components Software Product licensed to the Licensee and designated to the Licensee on the Visual Component’s relevant Shipping Note.

‘**Discrepancy**’ means a defect or a material difference between the operation of the Maintained Software and the description of the operation of the Maintained Software as provided in the current end-user documentation provided for the Maintained Software by Visual Components.

‘**Correction**’ means replacement distribution media or corrective code or documentation which rectifies a Discrepancy as described above. Visual Components 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, updates, corrections, model replacements and patches. All Corrections shall be subject to End User License Agreement of the Maintained Software.

## 2. MAINTENANCE SERVICES

During the Term of this SMA, Visual Components shall provide the following software maintenance services for the Maintained Software:

- Provision of available minor Corrections (bundling of several error corrections in one version) for download via the Internet.
- Provision of available major upgrades (version with substantially enhanced volume of functions).
- Information via electronic communication (email) when new minor/major updates are available.
- Information and support via electronic communication (email) for any technical problems.
- It is our policy to reply to all support requests within two (2) working days of receipt of the request.
- In response to confirmed Discrepancy in the Maintained Software, Visual Components shall use reasonable efforts to provide a Correction according to above definitions.

Any Correction provided under this SMA shall be subject to the terms and conditions of Visual Components EULA applicable to the Maintained Software.

## 3. SOFTWARE NOT COVERED BY THE SMA

The following Software is not covered by this Visual Components SMA: (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 the Licensee’s negligence or fault; (e) Discrepancies resulting from hardware malfunction; (f) Third party components (g) Discrepancies that do not significantly impair or affect the operation of the Maintained Software; or (h) Maintained Software used on a computer or operating system other than that specified by Visual Components. (NOTE: The computer and the operating system requirements for the Maintained Software, and for any medium or major upgrade thereof, may be specified by Visual Components at its full discretion.)

## 4. THE LICENSEE’S RESPONSIBILITIES

The Licensee agrees to report all suspected Discrepancies to Visual Components product support staff. The Licensee agrees to use reasonable efforts to assist Visual Components in its efforts to find Corrections to confirmed Discrepancies reported by the Licensee. The Licensee will have any relevant Corrections, patches, updates or upgrades installed at its own expense. In all contacts with Visual Components product support, the Licensee agrees to provide the product key given to the Licensee by Visual Components, along with the Licensee’s contact information.

## 5. PAYMENT

The Maintenance Fee for each Term shall be paid in advance. The Maintenance Fee is as determined in the Visual Components Price List as of the date which is 60 days prior to Maintenance Expiration date. The Maintenance Fee is due for payment annually in advance upon invoicing by Visual Components.

## 6. TERM AND TERMINATION

This SMA shall commence on the date set forth on Visual Component’s relevant Shipping Note and shall remain in effect for the subscription period of twelve (12) months (“Term”). Renewal of this SMA for successive twelve (12) months’ Terms shall be automatic until this SMA is terminated (i) by either Party upon sixty (60) days’ written notice prior to the expiration of the then ongoing Term; or (ii) by either Party upon a material breach of this SMA by the other Party, such breach remaining uncured for thirty (30) days from the date of written notice from the injured Party to the Party in breach, specifying such breach.

## 7. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR SAVINGS, LOST BUSINESS, LOSS OF DATA, LOSS OF REVENUE, LOSS OF USE OR MONEY, LOSS OF BUSINESS, LOSS OF OPPORTUNITY OR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES (WHETHER OR NOT ALSO CONSTITUTING ONE OF THE FOREGOING SPECIFIC TYPES OF LOSS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE OR OTHER FAULT OF EITHER PARTY), PRODUCT LIABILITY, OR OTHERWISE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING SHALL APPLY REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON AN ACTION OR CLAIM IN CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER THEORY OF LEGAL LIABILITY.

## 8. LIMITATION OF LIABILITY AND REMEDIES

NOTWITHSTANDING ANY DAMAGES THAT THE LICENSEE MIGHT INCUR FOR ANY REASON WHATSOEVER, THE ENTIRE AGGREGATED LIABILITY OF VISUAL COMPONENTS AND ANY OF ITS SUPPLIERS UNDER THIS SMA AND THE LICENSEE’S EXCLUSIVE REMEDY FOR ALL

OF THE FOREGOING SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY THE LICENSEE FOR THE SOFTWARE MAINTENANCE DURING THE APPLICABLE MAINTENANCE PERIOD.

#### **9. APPLICABLE LAW**

This SMA and all matters arising out of or in connection with this Agreement shall be interpreted, construed and governed exclusively in accordance with the laws of Finland. The United Nations Convention for the International Sale of Goods shall not apply. Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof shall be finally settled at VISUAL's discretion (i) at Your domicile's competent courts; or (ii) by arbitration in accordance with the Arbitration Rules of International Chamber of Commerce. The arbitration shall be conducted in Helsinki, Finland, in the English language. The award shall be final and binding on the Parties.

#### **10. ENTIRE AGREEMENT, SEVERABILITY**

This SMA (including any addendum or amendment hereto) is the entire agreement between the Licensee and Visual Components relating to the software maintenance and the support services (if any) and it supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the software maintenance or any other subject matter covered by this SMA. To the extent the terms of any Visual Components policies or programs for support services conflict with the terms of the EULA, the terms of the EULA shall control. If any provision of this SMA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

#### **11. Force Majeure**

11.1 Either party shall be entitled to suspend performance of his obligations under the Agreement during duration of force majeure.

11.2 Neither party shall be liable for any delay, non-performance or damages or expenses suffered by the other party as a result of force majeure. In an event of force majeure, the other party shall be notified without delay of its occurrence and estimated duration.

11.3 An event of force majeure is an unforeseeable event beyond the control of the Party which occurs after the time of signing of this Agreement and which essentially affects the ability of a party to fulfil its contractual obligations in such a way that the party could not reasonably overcome or prevent its effects from occurring. Events of force majeure shall include (without being limited to) war, strikes, fires, explosions, natural disasters etc.

11.4 If the performance of the Agreement is delayed by more than three (3) months as a result of a force majeure event, a party may terminate the Agreement by notifying the other party in writing thereof.