

# Maintenance and Support Agreement

Version date 2013

## Inventive Designers



This Software Maintenance and Support Agreement (“Agreement”), effective on the date of the last signature below (“Effective Date”), between Inventive Designers (“ID”) and the “Licensee” named in the signature block below (“Licensee”) sets forth the terms and conditions under which “ID” agrees to provide Software Maintenance and Support to “Licensee” as more fully described herein (the “Software Maintenance” and “Software Support” sections), for the “ID” proprietary software licensed to “Licensee” under a separate license agreement (“Software License Agreement”) and accepted by “Licensee”. Such software and related documentation and materials are referred to in this “Agreement” as the “Software”. This Agreement can only be modified by a written amendment that is signed by both parties.

**Entire Agreement.** The provisions contained in the present agreement constitute the whole maintenance and support agreement between parties and supersede all prior agreements and/or communications, whether oral or written, between parties relating to the subject matter hereof. No Exhibit and/or modification to the present agreement shall be valid, unless any such document expressly refers to the present agreement and is signed by both parties.

## 1. Definitions

- 1.1. For all definitions part of this Agreement we refer to the “Software License Agreement” of which the latest version is at “Licensee’s” disposal on <http://www.inventivedesigners.com>. On Licensee’s written request a hard copy of the latest version of the Software License Agreement can be provided.

## 2. Terms & Uses

- 2.1. This “Agreement” shall become effective on the “Effective Date” as specified in the “Agreement” and shall remain in effect for one (1) year.
- 2.2. This “Agreement” shall be automatically renewed after the Initial Term for successive annual terms. Such renewal shall be at the same Software Maintenance and Support Plan level unless otherwise agreed in an Amendment to this Agreement. The renewal fees for such Software Maintenance and Support shall be based on “ID’s” then current price list. The Software Maintenance and Support fee is based on the Software License Fee, the Software Upgrade Fee and/or the System Upgrade Fee as specified in this Agreement accordingly to ID’s “General Conditions of Sale”. The latest version of the “General Conditions of Sale” is at “Licensee’s” disposal on <http://www.inventivedesigners.com>. On Licensee’s written request a hard copy of the latest version of the Software License Agreement can be provided.
- 2.3. It is important to accentuate that only the latest version of these “General Conditions of Sale” will apply.

### 3. Payments

- 3.1. "Licensee" will pay to "ID", the applicable "Software Maintenance and Support" fees and renewal fees as specified in this "Agreement" accordingly to "ID's" "General Conditions of Sale", of which the latest version is at "Licensee's" disposal on <http://www.inventivedesigners.com>. Payments will be made in full without deduction for any import duties, value added, sales, use or other taxes or similar charges, which shall be borne and paid by "Licensee".

### 4. New releases

- 4.1. "ID" will support older versions the "Software" during 5 years after the official release date or 6 months after termination notification. The list of releases and supported versions will be published on "ID's" website.

### 5. Charges, Fees, Taxes

- 5.1. The Software Maintenance and Support fees are set forth in attachment hereto. All Software Maintenance and Support fees are not refundable. In addition to such fees, "Licensee" shall pay for all related out-of-pocket costs pertaining to the Software Maintenance and Support provided by "ID" in accordance with Section 5.3 below.
- 5.2. Other services, if requested by Licensee and rendered by ID, which are not part of the Software Support "ID" has agreed to perform as a part of this Agreement, will be charged to "Licensee" at "ID's" standard rates and accordingly to "ID's" "General Conditions of Sale", of which the latest version is at "Licensee's" disposal on <http://www.inventivedesigners.com>. On Licensee's written request a hard copy of the latest version of the Software License Agreement can be provided.
- 5.3. All reasonable out-of-pocket expenses, including all transportation, lodging, meals and other expenditures related to specified Software Support or other work "ID" has agreed to perform, including providing the on-site services of an "ID" Support Engineer, shall be in addition to the stated fees and charges.
- 5.4. The fees and other amounts required to be paid to "ID" are exclusive of taxes. Licensee shall remit to "ID" all sales, use, VAT, excise, and foreign withholding taxes, and all other taxes which "ID" is required to collect or remit to applicable tax authorities.
- 5.5. All amounts required to be paid hereunder are due upon execution of this "Agreement", or upon receipt of ID's invoice, as applicable. Unless stated otherwise in a writing signed by "ID", charges and fees under this "Agreement" are not subject to discount.
- 5.6. All charges and fees can be subject to annual indexation.

## 6. Software Improvements

- 6.1. Each update, upgrade, Error correction and other item resulting from the Software Maintenance and Support (“Software Improvement”) related to any specific Software provided to the Licensee by “ID” shall be deemed to become and constitute a part of that same Software along with any related material licensed under this or any prior Agreement. Upgrades, enhancements or new releases to the Software, which are separately priced by ID, will be made available to Licensee under ID’s then-current licensing terms and applicable fees and in accordance with ID’s upgrade policies then in effect.
- 6.2. Use of all Software Improvements is strictly limited to the rights granted to Licensee pursuant to the License Agreement for the applicable Software. In addition, all Software Improvements and other information, including oral or written identification of, or information regarding, any problems or defects in the Software, are confidential and proprietary to ID. Licensee acknowledges and agrees that the Software Improvements and such other information are to be held in confidence and are subject to the confidentiality and nondisclosure and other provisions of the Agreement that pertain to the protection of ID’s proprietary information and intellectual property rights in the Software.

## 7. Licensee’s Obligations

- 7.1. “Licensee” accepts all of the following obligations as a condition to receiving the Software Maintenance and Support provided by ID:
  - 7.1.1. “Licensee” will have all information and materials relating to the Software available when contacting “ID” regarding Software problems.
  - 7.1.2. “Licensee” will also provide “ID” with supporting documentation and written descriptions of a given problem when requested by “ID” and furthermore provide “ID” with a Test case of the Software problem.

## 8. Confidentiality

- 8.1. Confidentiality  
“Licensee” acknowledges that the “Licensed Software” incorporates confidential and proprietary information developed or acquired by or licensed to “ID”. “Licensee” will take all reasonable precautions necessary to safeguard the confidentiality of the “Licensed Software”, including (i) those taken by “Licensee” to protect “Licensee’s” own confidential information and (ii) those which “ID” or its authorized representative may reasonably request from time to time. “Licensee” will not allow the removal or defacement of any confidentiality or proprietary notice placed on the “Licensed Software”. The placement of copyright notices on these items will not constitute publication or otherwise impair their confidential nature.

## 8.2. Disclosure

“Licensee” will not disclose, in whole or in part, any item of the “Licensed Software” bearing a confidentiality notice, or items mentioned on the original “Software License Certificate”, to any individual, entity, or other person, except to those of “Licensee’s” employees or consultants who (i) require access for “Licensee’s” authorized use of the “Licensed Software” and (ii) agree to comply with the use and nondisclosure restrictions applicable to the “Licensed Software” under this Agreement. “Licensee” acknowledges that any unauthorized use or disclosure of the “Licensed Software” may cause irreparable damage to “ID”, its “Licensees” and its licensors. If an unauthorized use or disclosure occurs, “Licensee” will immediately notify “ID” and take, at “Licensee’s” expense, all reasonable steps which may be available to recover the “Licensed Software” and to prevent their subsequent unauthorized use or dissemination.

## 9. Termination

9.1. “Licensee” may terminate this “Agreement”, without any right to refund, by registered letter to “ID” of such termination at least 60 days prior to the expiration date of the annual “Software Maintenance” term. Unless otherwise specified, “ID” may terminate this “Agreement” immediately and without judicial or administrative resolution, if “Licensee” or any of “Licensee’s” employees or consultants breach any term or condition hereof.

9.2. If the yearly subscription is interrupted by the “Licensee” due to a termination-request or unpaid fees, recent releases can be delivered again after the payment of a “Software Upgrade Fee” or a catch-up fee. This catch-up fee covers the period starting from the termination date of the last paid maintenance period up to and including this year’s annual maintenance.

## 10. Disclaimer of Warranties

10.1. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, “ID” MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 11. Limitation of Liability

11.1. “ID’S” LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE ANNUAL SOFTWARE MAINTENANCE AND SUPPORT FEES PAID DURING THE APPLICABLE SUPPORT PERIOD IN WHICH SUCH DAMAGES AROSE.

11.2. “ID” WILL NOT BE LIABLE FOR LOST PROFITS OR GOODWILL OR LOSS OF DATA, OR FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, UNDER ANY THEORY OF LIABILITY, EVEN IF “ID” IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 12. General Provisions

### 12.1. Force Majeure

Neither party shall be held liable for failure to perform its obligations hereunder, if such failure is due to flood, exceptional weather conditions, fire or any similar natural disasters, legal orders or similar causes, which occur beyond the control of the party invoking force majeure. Such causes can never constitute a ground for termination of the present agreement, unless the other party gives its written consent thereto.

### 12.2. Law Applicable and Jurisdiction

The present agreement shall be governed by the laws of Belgium. The Courts of Antwerp shall have jurisdiction to settle any dispute.

### 12.3. Compliance with Laws and Regulations

Both parties shall, for their own accounts, comply with the laws and regulations in respect of the public authorities relating to the present agreement and pay all license charges or other expenses.

### 12.4. Severability

Should one of the provisions contained in the present agreement be in contravention of law, the remaining provisions shall remain in full force and effect.

### 12.5. Notices and Payments

Any notice required under this Agreement shall be given in writing and shall be deemed effective upon delivery to the party to whom addressed. All notices shall be sent to the applicable address specified in the signature block or to such other address as the parties may designate in writing. All notices sent pursuant to this section shall be sent in writing via certified mail return receipt requested, or in such a way that sender obtains a written receipt. Any notice or payment in connection with the present agreement shall be sent, postage prepaid, to Inventive Designers using the contact details our corporate website <http://www.inventivedesigners.com/contact>.

### 12.6. Transferring and Assigning Agreement

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of "ID". Licensee may not transfer or assign this Agreement by merger, sale of assets, operation of law, change of control, or otherwise without the prior written consent of "ID". Any attempted assignment in violation of the foregoing shall be null and void. In the event an action including arbitration, is brought to enforce any provision or declare a breach of this Agreement, the prevailing party shall be entitled to recover in addition to any other amounts awarded, reasonable attorneys' fees and other related costs and expenses.

### 12.7. Miscellaneous

#### 12.7.1. No waiver by any party of any breach of any provision of this Agreement shall constitute a waiver of any other breach of the same or any other provision of this Agreement.

#### 12.7.2. If the "Software License Certificate" contains aberrant information about a specific paragraph of the Software Maintenance and Support Subscription Terms, then the "Software License Certificate" specifications will apply for that specific paragraph.

- 12.7.3. “Licensee” acknowledges to have read this Agreement, understands it and agrees to be bound by its terms and conditions. “Licensee” agrees that this document together with all attachments represents the complete Agreement between the parties and that it supersedes all previous oral and written Agreements concerning the Software Maintenance and Support Subscription.

## 13. Software Maintenance and Support Definition

- 13.1. Unless stated otherwise in Attachment or Amendment to the Agreement, “ID” offers Software Maintenance and Support and Plans as more fully described below. “ID” also offers Additional Support Services (as set forth below) at additional charges. If a Software Maintenance and Support Plan is selected by Licensee, “ID” will provide Support Service in accordance with the Software Maintenance and Support Service Plan selected, provided that Licensee remains current on all applicable Software Maintenance and Support fees.
- 13.2. Software Maintenance and Support is automatically and implicitly purchased together with the “Licensed Software”, unless it is explicitly refused at the time of purchase, and starts after the expiration of “Warranty Period”.
- 13.3. “Software Maintenance and Support” automatically includes “Software Support” of “Standard” level in accordance with the Support level definitions below. Higher levels of “Software Support” are available and implicate a higher “Software Maintenance and Support” fee. The different levels are described in the Software Support definition section below.

### Software Maintenance Levels

Support Level
Standard
Premium
Select

### Additional Support Services

Additional Service
Emergency License Key
Technical Account Management

13.4. All fees mentioned above are uninterrupted, nonrefundable and annually paid.

13.4.1. Software Maintenance

For the Software Maintenance description we refer to the “Software License Agreement” of which the latest version is at “Licensee’s” disposal on <http://www.inventivedesigners.com>.

13.4.2. Emergency License Key

For the Emergency License Key description we refer to the “Software License Agreement” of which the latest version is at “Licensee’s” disposal on <http://www.inventivedesigners.com>.

13.4.3. Technical Account Management

For the Technical Account Management description we refer to the “Software License Agreement” of which the latest version is at “Licensee’s” disposal on <http://www.inventivedesigners.com>. A detailed description of the process and the deliverables can be requested by the “Licensee”.

13.5. Software Support Services

13.5.1. Language

Each Issue Reporter must have English language communication skills and the relevant technical knowledge necessary to assist “ID” in performing the Software Support Services contemplated under this Agreement.

13.5.2. Service ticket reporting

A Support Service Ticket is defined as a single discrete question, problem or bug (that cannot be divided into subordinate problems) as recorded in a single Support Service Ticket in Inventive Designers’ Support Center. If a problem includes subordinate problems, then the ticket will be split up into separate Support Service Tickets.

“Licensee” can request support by submitting a Support Service Ticket through the Inventive Designers Support Center using <https://support.inventivedesigners.com/> where all Support Service Tickets will be documented and tracked. A user id (login) is needed before a request can be submitted by the “Licensee”.

In the Support Center “Licensee” will have access to the Knowledge Base. This Knowledge Base contains a selection of Frequently Asked Questions. “Licensee” shall have access to the Community Forum.

13.5.3. Problem resolution procedures

Once “Licensee” has submitted a Support Service Ticket in the Support Center, “Licensee” will receive a confirmation that the Support Service Ticket has been received by Inventive Designers. Inventive Designers will use commercially reasonable efforts to provide answers and resolve “Licensee’s” requests for Support Services within Inventive Designers’ standard response times associated with the Support Service Plan selected by “Licensee”.

However, no software is perfect or error free and Inventive Designers may not be able to provide answers to or resolve some or all requests. Therefore Inventive Designers makes no promises, guarantees, or assurances of any kind.



## Escalation and Severity Levels

Escalation levels	
Firstline	All support requests enter ID's support system at this initial level. If the support employee cannot resolve the issue, it is escalated to Backline, or directly to a higher level, wherever appropriate.
Backline	The technicians at this level are more experienced with the "ID" products and the entire scope of applications with which ID's products connect. If they cannot resolve the issue, it will be escalated to Development.
Development	The engineers at this level are part of ID's Development team. This group performs product fixes, but does not have direct contact with ID's customers. The ownership stays with the Backline Support Technician.

Severity	
Severity 1	Your PRODUCTION use of the supported programs is stopped or so severely impacted that you cannot reasonably continue work. You experience a complete loss of service. The operation is mission critical to the business and the situation is an emergency. Performance issues are not Severity 1 incidents.
Severity 2	You experience a severe loss of service. Important features are unavailable with no acceptable workaround; however, operations can continue in a restricted fashion.
Severity 3	You experience a minor loss of service. The impact is an inconvenience, which may require a workaround to restore functionality.
Severity 4	You request information, an enhancement, or documentation clarification regarding your software but there is no impact on the operation of the software. You experience no loss of service. The result does not impede the operation of a system.

## Software Support Levels

Support Level	Description
Standard	<ul style="list-style-type: none"> <li>• Customer Web Access</li> <li>• Electronic reporting for all severities</li> <li>• SLA               <ul style="list-style-type: none"> <li>○ Maximum response time in business hours: Best effort</li> <li>○ Problem Resolution Window: Business hours</li> </ul> </li> </ul>
Premium	<ul style="list-style-type: none"> <li>• Customer Web Access</li> <li>• Telephone reporting for Severity 1 and 2</li> <li>• Electronic reporting for Severity 3 and 4</li> <li>• SLA               <ul style="list-style-type: none"> <li>○ Maximum response time in business hours:                   <ul style="list-style-type: none"> <li>▪ Severity Level 1: 4 hours</li> <li>▪ Severity Level 2, 3 and 4: Best effort</li> </ul> </li> <li>○ Problem Resolution Window: Business hours</li> </ul> </li> <li>• Certified Contact required at Customer Site</li> </ul>
Select	<ul style="list-style-type: none"> <li>• Customer Web Access</li> <li>• Telephone reporting for Severity 1 and 2</li> <li>• Electronic reporting for all Severity 3 and 4</li> <li>• SLA               <ul style="list-style-type: none"> <li>○ Maximum response time in business hours:                   <ul style="list-style-type: none"> <li>▪ Severity Level 1: 2 hours</li> <li>▪ Severity Level 2, 3 and 4: Best effort</li> </ul> </li> <li>○ Problem Resolution Window:                   <ul style="list-style-type: none"> <li>▪ Severity Level 1: 24 x 7</li> <li>▪ Severity Level 2, 3 and 4: Business hours</li> </ul> </li> </ul> </li> <li>• Certified Contact required at Customer Site</li> </ul>

## 14. Exceptions

- 14.1. “ID” has no obligation to provide Software Support for problems in the operation or performance of the Software caused by any of the following (each, a “Licensee-Generated Error”): (a) non-ID software or hardware products; or (b) Licensee’s failure to properly maintain Licensee’s location and equipment on which the “ID” Software is installed or accessed. If “ID” determines that it is necessary to perform Services for a problem caused by a Licensee-Generated Error, then “ID” will notify Licensee thereof as soon as “ID” is aware of such Licensee-Generated Error and, upon Licensee’s written request, “ID” will perform such professional services and invoice Licensee at ID’s then-current published time and materials rates for all such professional services performed by ID.

- 14.2. “ID” is not responsible for correcting any Errors not reproducible by “ID” on unmodified Software or errors caused by: (a) Licensee’s failure to implement all updates issued under this Agreement; (b) changes to the hardware and platform on which the Software is intended to run, (c) any alterations or additions to the Software made by parties other than ID; (d) use of the Software in a manner for which it was not designed; (e) interconnection of the Software with other software products not designated by ID; or (f) use of the Software on an unsupported platform or unauthorized hardware. If “ID” is unable to reproduce any Errors on unmodified Software installed at “ID” or at Licensee’s site via remote connectivity (e.g. VPN access), then “ID” will use commercially reasonable efforts to diagnose Errors at Licensee’s site, provided Licensee pays ID’s then-current professional services fees and reasonable travel-related expenses.

## 15. Professional Services and Training

- 15.1. Occasionally, a support request exceeds reasonable boundaries for normal technical support. Any such requests for services that are outside the scope of the Agreement are categorized as professional services and “ID” will, in such cases, offer such professional services at ID’s then-current services rates, subject to ID’s standard professional services terms and conditions. Similarly, there are occasions when a support request encroaches into one-on-one training. In such cases, “ID” will offer training at ID’s then-current training rates, subject to ID’s standard training terms and conditions.

IN WITNESS WHEREOF, the present agreement has been drawn up in Hoboken in two counterparts; each party hereto acknowledges receipt of one counterpart.

The foregoing is agreed to by:

Inventive Designers	XXXXX
Accepted by	Accepted by
Signature	Signature
Joke Dehond CEO	XXXXX XXXXX
Date:	Date:

# ATTACHEMENT TO SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT

This attachment to the Software Maintenance and Support Agreement contains the summary of Software Maintenance and Support level selected:

Level	Annual Maintenance and Support Fees
<input type="radio"/> Standard	
<input type="radio"/> Premium	
<input type="radio"/> Select	
Additional Services	
<input type="radio"/> Emergency License Key Service	
<input type="radio"/> Technisch Account Management	
Total due upon execution	

Other:

The foregoing is agreed to by:

Inventive Designers	XXXXX
Accepted by	Accepted by

Signature

Joke Dehond  
CEO

Date:

Signature

XXXXX  
XXXXX

Date: