

xpertcare Subscription

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THIS AGREEMENT IS BETWEEN YOU (EITHER AN INDIVIDUAL OR AN ENTITY) AND XP SOLUTIONS. YOU SHOULD READ THIS CAREFULLY AND RETAIN THE ENCLOSED SOFTWARE MAINTENANCE SUBSCRIPTION CERTIFICATE ("CERTIFICATE") THROUGHOUT THE ENTIRE SUBSCRIPTION TERM.

BY USING THE COPIES OF XP SOLUTIONS OR BY USING ANY ASSOCIATED SERVICES OR BENEFITS, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY ALL OF THE TERMS AND RESTRICTIONS OF THE **LICENSE AGREEMENT**.

1. Access to Maintenance and Technical Support Services

XP Solutions grants you a nontransferable right to access **xpertcare** Maintenance and Technical Support Services from XP Solutions or its Authorized Support Office (as specified on the attached Certificate), according to the terms and conditions of this Agreement.

xpertcare Maintenance Services included with your Subscription:

- 1.1 Access to a secure area on the XP Solutions internet site to download any new version or maintenance release for the software listed on your Certificate that becomes available during your Subscription.
- 1.2 Access to documentation on all enhancements (defined as new features, capabilities and operational characteristics) completed and implemented during the term of your Subscription.
- 1.3 Notification by internet, mail, e-mail, or fax of new versions and maintenance releases.

xpertcare Technical Support Services included with your Subscription:

- 1.4 Unlimited access to technical support specialists during normal business hours Monday to Friday of your Authorized Support Office, via the telephone and fax numbers or the internet and e-mail addresses listed on the Certificate.
- 1.5 Access to engineering support specialists, charged on a per incident basis (rate to be agreed prior to provision of such support), during normal business hours Monday to Friday of your Authorized Support Office, via the telephone and fax numbers or the internet and e-mail addresses listed on the Certificate.
- 1.6 Access to the most up-to-date technical information through the XP Solutions technical support web site.
- 1.7 All reasonable efforts will be made to provide a response by the next business day or sooner.

If you have selected the option of prepayment for attendance at a training workshop, as noted on your Certificate, you will also have the right to send one person each twelve (12) month period to a scheduled XP Solutions training workshop of up to two days in duration.

2. Limitations of Technical Support Services

xpertcare Technical Support Services as outlined in Section 1 are restricted to requests for assistance for basic problem solving and diagnostics; install/uninstall errors; license registration; missing or damaged media; clarification of associated software documentation; application of software features; and explanation of calculation warnings and errors.

Examples of topics that are not covered as Technical Support include, but are not limited to: setup, installation, and registration of unsupported software products; hardware support; general engineering advice on the design of the model; unsupported data import and conversion (from data sources not supported as per the XP Solutions website); and customized utilities that interface with the Software.

In addition, **xpertcare** Technical Support Services do not include the diagnosis and rectification of any fault arising from the improper use, operation or neglect of either the Software; modification of the Software; failure by the Licensee to implement

recommendations relating to solutions and faults previously advised by XP Solutions; and any use of the Software for a purpose for which it was not designed.

xpertcare Technical Support Services are available throughout the term of your Subscription Monday to Friday during the normal business hours of the XP Solutions Office or Authorized Distributor defined on your Certificate, excluding observed national and religious holidays.

A response to a request for support may consist of receipt of and acknowledgement by XP Solutions of your request for support, and may or may not include answers to your request for support. You acknowledge and understand that no software is perfect or error-free, and that despite its commercially reasonable efforts, XP Solutions may be unable to provide answers to or resolve some or all requests for support. XP Solutions makes no promises, guarantees, or assurances of any kind that it will be able to provide answers for or resolve the requests for the support you seek.

3. Subscription Term and Payment

The Subscription shall begin on the date of purchase which is referred to as the commencement date stated on the Certificate and will continue for an initial twelve (12) month term. Near the end of the term, the Subscription shall be automatically invoiced for an additional twelve (12) month renewal period based on the anniversary of the commencement date. Upon receipt of payment for the renewal of the Subscription, a new certificate will be issued

3.1 If you have purchased a current version of an XP Solutions product, the initial twelve (12) month term Subscription is provided free of charge by XP Solutions. Thereafter you agree to pay XP Solutions in full the annual maintenance fee (15% of the current retail list price of the software and accompanying modules plus a small administration fee unless noted otherwise) each year on the anniversary date of this purchase, and if applicable, an additional training workshop prepayment fee. XP Solutions reserves the right to change the annual maintenance fee, however such change shall not take effect until the next anniversary of the commencement date.

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XP Solutions's entire liability and your exclusive remedy under the warranties made in this Agreement will be at XP Solutions's option, to provide a pro rata refund of the **xpertcare** Maintenance Subscription Fee calculated as of the date of termination. This remedy is subject to the return of the Certificate and any Software, documentation and copy protection device sent to you during the term of the current Subscription.

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10. General

10.1 This Subscription commences on the Commencement Date. It may be terminated by either party providing the other party with written notice prior to the anniversary date of the Commencement Date, advising its decision to terminate the Subscription effective from that anniversary date.

This Subscription may be terminated without further notice or action by XP Solutions, if you breach any term of the License Agreement or become bankrupt, make an arrangement with your creditors or go into liquidation or if the relevant License Agreement between you and XP Solutions is terminated.

If XP Solutions terminates the Subscription, in addition to terminating the Subscription it may:

- (a) repossess any of its property in your possession, custody or control;
- (b) retain any annual maintenance fees paid;
- (c) charge a reasonable sum for work performed in respect of which no sum has been previously charged; and
- (d) be regarded as discharged from any further obligations under this Subscription.

Termination pursuant to this clause shall not affect any rights or remedies which XP Solutions may have otherwise under this Subscription or the relevant License Agreement or at law.

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Your location: Continental North and South America

XP Solutions corporate entity: XP Software Inc. DBA "XP Solutions" a company incorporated in the United States of America under company registration number 59-3169325 and whose registered office address or principal place of business is 6720 SW Macadam Ave, Suite 150, Portland, Oregon, 97219, United States.

Governing Law and Jurisdiction: Oregon

Your location: Australasia, Remainder of Asia

XP Solutions corporate entity: XP Software Pty Ltd a company incorporated in Australia under company registration number ABN 83 078 971 990 and whose registered office address or principal place of business is 247 St Pauls Terrace, Fortitude Valley, Queensland 4006, Australia.

Governing Law and Jurisdiction: Australia

Your location: Europe, Middle East, Africa, India, Russia

XP Solutions corporate entity: XP Solutions Software Limited, a company registered in England and Wales under company registration number 02320539 and whose registered office address is at Jacobs Well, West Street, Newbury, Berkshire RG14 1BD.

Governing Law and Jurisdiction: England

10.3 If any provision of these conditions is found to be invalid or otherwise unenforceable, the further conditions of this license will remain fully effective and the parties will be bound by obligations which approximate, as closely as possible, the effect of the provision found invalid or unenforceable, without being themselves invalid or unenforceable.

10.4 The benefit of this license shall not be dealt with in anyway by you, whether by assignment, sublicensing or otherwise, without the written consent of XP Solutions.

10.5 Failure or neglect by either party to enforce at anytime any of the provisions of this Subscription agreement shall not be construed or deemed to be a waiver of that party's rights under this agreement.

10.6 You shall not, without the prior written approval of XP Solutions, disclose its Confidential Information. You shall take all reasonable steps to ensure that your employees and agents, and any subcontractors do not make public or disclosed Confidential Information. This clause shall survive the termination or expiration of this Subscription. For the purpose of this agreement 'Confidential Information' means all information, whether or not in a material form, relating to the subject matter of this Subscription agreement or the License Agreement or both but excluding information to the extent that it is publicly available, otherwise then as a result of a breach of this Agreement.