

PBS Pro TECHNICAL SUPPORT SERVICES AGREEMENT-2003

This agreement ("Agreement") for technical support services for PBS Pro Software ("PBS Pro") is made between Altair Engineering Inc.'s Value Added Reseller ("VAR") _____ and _____ ("Licensee"). This Effective Date of this Agreement is _____, 200_ ("Effective Date").

1. **Acceptance.** This Agreement will be deemed accepted by Licensee (a) upon issuance of a Purchase Order to VAR with reference to the Agreement title above on the PO, or (b) by signing this Agreement. Any terms or conditions on Licensee's Purchase Order (whether preprinted or not) that are additive to, or conflict with the terms of this Agreement are hereby rejected and such terms may become a part of this Agreement only by way of a separate writing signed by an authorized representative of VAR.

2. **Support.** This Agreement entitles Licensee to obtain Technical Support Services ("Support") from VAR and any upgrades released during an active Technical Support Services Agreement. Support is included in the fee for annual leases of PBS Pro Software. Support is provided for a fee for perpetual lease licenses.

Support means answers to questions, guidance, and other assistance as described in Attachment A. Support **excludes** configuration of hardware, non-PBS software, Licensee modified PBS Pro software; and networking services; consulting services; general solution provider related services; and general computer system maintenance. Licensee will be responsible for performing operations on Licensee's computer system, and VAR shall have no responsibility to perform operations on Licensee's computer system.

Licensee agrees to provide to VAR all information reasonably requested by VAR to enable VAR to provide Support. Such information may include, but not be limited to, the type of hardware Licensee is using, a description of the problem for which Licensee seeks Support, and additional software Licensee is using that falls outside the Subject Matter Scope of Coverage set forth in paragraph 2 ("Licensee Technical Information"). Licensee understands and agrees that the completeness and accuracy of the information Licensee provides to VAR pursuant to this Section may affect VAR's ability to provide Support and that VAR shall have no liability to Licensee or any third party on account of its reliance on incomplete or incorrect Licensee Technical Information.

3. **Subject Matter; Scope of Coverage.** VAR will provide Support for the current release of the official version of the PBS Pro product. VAR will not provide Support for software that is not included as part of the official PBS Pro product.

Licensee understands and agrees that PBS Pro may not function with certain hardware systems and components. Such hardware is unsupported hardware. VAR shall have no obligation to provide Support for any system that is or that includes unsupported hardware. The PBS Pro developer, Altair Grid Technologies ("AGT"), maintains a list of supported hardware at <http://www.pbspro.com/hardware.html>, which may be amended by AGT in its discretion from time to time. Any and all hardware not on the list of supported hardware is unsupported hardware.

VAR will review incoming error messages or support requests on a regular basis to determine if a particular Licensee's support request rate is excessive. In the event that it is deemed excessive, VAR will recommend corrective action to Licensee(s) which may include training, on site support or other suitable remedy to be delivered on a fee basis to Licensee(s).

4. **Responses to Requests.** A response to a request for Support may consist of receipt of and acknowledgement by VAR of Licensee's request for Support, and may not include complete answers to Licensee's request for Support. Licensee acknowledges and understands that no software is perfect or error free, and that despite its commercially reasonable efforts, VAR may be unable to provide complete answers to or resolve some or all requests for Support. VAR makes no promises, guarantees or assurances of any kind that it will be able to provide the Support Licensee seeks.

5. **Term and Termination.** This Agreement shall expire on the first anniversary of the Effective Date unless renewed. VAR may terminate this Agreement prior to its expiration in the event that Licensee commits a material breach of this Agreement and fails to remedy that breach within 30 days of receipt of notice of material breach, or as otherwise provided in this Agreement.

For annual lease licenses, this Agreement will be automatically renewed when the annual PBS Pro license is renewed. Support for perpetual lease licenses will be provided upon Licensee's written agreement subject to the then current annual Support Pricing Schedule.

6. **Payment.** All Support fees are due in full in advance. Any and all payments for Support made by Licensee are non-refundable. There shall be no refunds or credits for unused services upon the termination of this Agreement for any reason or at any other time. In the event that Licensee fails to make payment to VAR pursuant to this Agreement, VAR's obligations to provide Support shall be suspended until VAR receives full payment from Licensee for all fees, including late fees and interest, due to VAR.

7. **No Transfer.** Any re-use, transfer, assignment or distribution of Support without the prior written permission of VAR is prohibited. Any attempt to transfer, assign or redistribute Support in violation of this section shall be considered a material breach of this Agreement and shall immediately terminate this Agreement and all Licensee rights under it.

8. **Limited Warranty.** VAR warrants for a period of ninety (90) days after Licensee initially receives the Software that the Software will perform substantially as described in then current Documentation and this Agreement.

AGT, ALTAIR AND ITS VARS DO NOT REPRESENT OR WARRANT THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT IT WILL BE COMPATIBLE WITH ANY PARTICULAR HARDWARE OR SOFTWARE. AGT, ALTAIR AND ITS VARS EXCLUDE AND DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES NOT STATED HEREIN, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK FOR THE PERFORMANCE, NON-PERFORMANCE OR RESULTS OBTAINED FROM USE OF THE SOFTWARE RESTS WITH LICENSEE AND NOT AGT OR ALTAIR OR ITS VARS. AGT AND ALTAIR AND ITS VARS MAKE NO WARRANTIES WITH RESPECT TO THE ACCURACY, COMPLETENESS, FUNCTIONALITY, SAFETY, PERFORMANCE, OR ANY OTHER ASPECT OF ANY DESIGN, PROTOTYPE OR FINAL PRODUCT DEVELOPED BY LICENSEE USING THE SOFTWARE.

9. **Limitation of Liability.**

VAR's entire liability for all claims arising under or related in any way to this Agreement (regardless of legal theory) shall be limited to direct damages, and shall not exceed, in the aggregate for all claims, the license fees paid by Licensee under this Agreement for the then current Term on a prorated basis. ALTAIR, ITS VARS, AND ITS SUPPLIERS AND THE U.S. GOVERNMENT SHALL NOT BE LIABLE TO LICENSEE OR ANYONE ELSE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING HEREUNDER (INCLUDING LOSS OF PROFITS OR DATA, DEFECTS IN DESIGN OR PRODUCTS CREATED USING THE SOFTWARE, OR ANY INJURY OR DAMAGE RESULTING FROM SUCH DEFECTS, SUFFERED BY LICENSEE OR ANY THIRD PARTY) EVEN IF ALTAIR, ITS VARS OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. **Government Restricted Rights.** Any Software and Documentation provided hereunder are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subdivision(c)(1)(ii) of the rights in the Technical Data and Computer Software clause in DFARS 252.227-7013, or in subdivision (c)(1) and (2) of the Commercial Computer Software-Restricted Rights clause at 48 CFR52.227-19, as applicable. The Contractor/Manufacturer is Altair Grid Technologies, LLC. Any inquiries regarding the Software are to be directed to Altair Engineering, Inc., 1820 E. Big Beaver Road, Troy, MI 48083, U.S.A.

11. **General.**

Governing Law. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Michigan, U.S.A., regardless of its choice of law provisions. Any dispute arising out of this Agreement shall be adjudicated solely in the applicable federal or state courts within the State of Michigan. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. **Notice.** All notices or other communications required to be given

hereunder shall be in writing and delivered either personally or by U.S. mail, certified, return receipt requested, postage prepaid, and addressed as provided in this Agreement or as otherwise requested by the receiving party. Notices delivered personally shall be effective upon their receipt by the party to whom they are addressed. **Force Majeure.** Neither VAR shall not be liable for any delay or failure in performance under this Agreement resulting directly or indirectly from acts of God or causes beyond its reasonable control. **Entire Agreement.** This Technical Support Services Agreement, including Attachment A which is incorporated herein, constitutes the entire understanding of the parties on the subject matter of this Agreement. This Agreement supersedes and terminates all prior representations, warranties and agreements, written or oral, regarding the subject matter of this Agreement. Any modification to this Agreement must be in a writing signed by both parties. Failure or delay on the part of any party to exercise any right, remedy, power or privilege hereunder will not operate as a waiver. Any waiver must be in writing and signed by the party granting such waiver in order to be effective.

(VAR) _____

(Licensee) _____

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment A

Support Pricing Schedule

PBS Support:

- o Performed from VAR's location.
- o Normal Business Hours: 8am - 5pm local time in VAR's territory
- o Prices as per current PBS price list
- o Standard Support:

Includes email, telephone, web, or fax support with a four-business hour guaranteed response time. Licensee can identify up to three individuals authorized to contact PBS Support. Any support requests received under this support plan will be treated as high priority.

Service Level - Standard Support Plan:

A. Availability of Coverage:

Licensee is entitled to seek Support from 8:00am to 5:00pm local time, Monday through Friday, excluding holidays, throughout the term of this Agreement.

B. Who May Seek Support:

Licensee may designate up to 3 (three) persons who are authorized by Licensee to seek Support from VAR. These authorized persons are listed below.

C. Response Times:

VAR will respond to requests for Support according to the following schedule:

- Priority 1: Failure of a mission critical service or serious security breach
--Response: within 4 business hours
- Priority 2: Failure of a non-mission critical service, minor security breach
--Response: within 1 business day
- Priority 3: All requests for Support that are not Priority 1 or Priority 2
--Response: within 2 business days. Licensee agrees to cooperate in good faith with VAR in classifying requests for Support according to the preceding schedule.

Authorized Support Seekers

The following people are authorized by Licensee to seek Support from VAR:

1. Name & Email: _____
2. Name & Email: _____
3. Name & Email: _____

Licensee may change this authorization at any time by giving written notice to VAR at least five days in advance of the date Licensee wishes the change to be effective. VAR shall have no obligation to provide Support to unauthorized persons.

VAR shall have no responsibility for any unauthorized use of Support pursuant to this agreement. In the event that Licensee or Licensee's employees, contractors, or other agents fraudulently attempt to obtain Support, VAR shall have the option to terminate this Agreement immediately by transmitting written notice of termination to Licensee.