

# Support and Maintenance Agreement

Savision 2019

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SAVISION, Inc., a Delaware corporation, with offices at 320 Decker Drive, Suite 100, Irving, TX 75062, if Customer is located in the United States, or SAVISION Canada Limited, a Canadian corporation, with offices at 110-390 March Road, Kanata, Ontario, K2K 0G7, if Customer is located in Canada, and all related or wholly owned subsidiaries, hereinafter referred to as "SAVISION", and either directly or through its PARTNER, agrees to provide to the services described in this support and maintenance agreement (the "Support and Maintenance Agreement"), subject to the rights and obligations as specified herein. Any capitalized terms not expressly defined in this Support and Maintenance Agreement will have the meanings given to such terms in the Order Form or the End-User License Agreement (the "EULA") applicable to the Software.

## **1. Definitions**

(a) "Business Day" means a business day, which shall exclude weekends and U.S. federal holidays and statutory holidays in the Province of Ontario.

(b) "Error" means a software problem or documentation error, which causes a failure of the Software to operate in accordance with its specifications when used as authorized under the EULA.

(c) "Support" means the services provided by SAVISION which may include installation, configuration and/or implementation of the Software for CUSTOMER as set forth herein.

(d) "Update" means a release or version of the Software containing minor functional enhancements, extensions, error corrections or fixes, which may be indicated by a change in the numeric identifier for the Software in the digit to the right of the decimal as determined by SAVISION and that is generally made available by SAVISION free of charge to SAVISION's customers.

(e) "Upgrade" means a release or version of the Software that contains new features or significant functional enhancements, which are indicated by a change in the numeric identifier for the Software in the digit to the left of the decimal, as determined by SAVISION in its sole discretion and that may be made available by SAVISION subject to separate fees and charges.

(f) "Workaround" means a modification or "patch" of the Software, which may be of a temporary or interim nature, to help avoid an Error.

## **2. Effective Date of this Support and Maintenance Agreement**

This Support and Maintenance Agreement between CUSTOMER and SAVISION shall take effect upon CUSTOMER entering into an agreement with SAVISION, for instance, by returning a signed Order Form, pursuant to which: (i) CUSTOMER obtains a perpetual license to use the Software and a right to receive the services set out herein; or (ii) CUSTOMER obtains a term license to use the Software and a right to receive the services set out herein (the "Effective Date"), provided the Customer is not in default in respect of payment of the applicable License Fee or Support and Maintenance Fee.

### **3. Technical Support**

During the term of this Support and Maintenance Agreement, SAVISION shall provide a telephone hotline staffed by support personnel who shall be available on Business Days during the hours of 8 a.m. to 6 p.m. Eastern Standard Time to answer technical questions by CUSTOMER regarding use and operation of the Software. SAVISION's online Help Desk is available twenty-four (24) hours a day, seven (7) days a week. The average response time for online support is one (1) day.

### **4. Version Updates and Upgrades**

During the term of this Support and Maintenance Agreement, upon request, CUSTOMER shall be entitled to receive or download one (1) copy (key) of each Update, including bug and version updates, if any, which SAVISION makes generally available to its maintenance and support customers. CUSTOMER may acquire additional copies of the Documentation for free electronically. Platform upgrades may be subjected to additional license terms and fees.

### **5. Product Updates**

During the term of this Support and Maintenance Agreement, upon request, CUSTOMER is entitled to a free product Update from Live Maps for Operations Manager 2007 to Live Maps for Operations Manager 2012 if the initial purchase was complete before January 1st, 2013.

### **6. Test License/ Non-Production**

During the term of this Support and Maintenance Agreement, SAVISION will provide a temporary license to the CUSTOMER solely for non-production testing purposes. This license will expire automatically on the same date as the expiry or earlier termination of this Support and Maintenance Agreement.

### **7. Special Services**

All Software support or other consultation services not covered by this Support and Maintenance Agreement which CUSTOMER requests, may be provided by SAVISION subject to the mutual agreement of the parties and at SAVISION's then-current rates. All services provided by SAVISION at CUSTOMER's request, other than during SAVISION's normal working hours at SAVISION's headquarters shall be billed as special services.

### **8. Fees and Payments**

Fees for Support and Maintenance are as set out in the Order Form ("Support and Maintenance Fees"). Following the first year of the term of this Support and Maintenance Agreement, SAVISION may, on an annual basis, increase the Support and Maintenance Fees payable in respect of the Support and Maintenance provided that any such increase does not exceed, on a percentage basis, the increase in the Consumer Price Index, published either by Statistics Canada or the United States Department of Labor, as applicable, over the immediately preceding one year period.

CUSTOMER will pay SAVISION or PARTNER - as the case may be - the applicable Support and Maintenance Fee annually within thirty (30) days of the invoice date, exclusive of all applicable taxes for which CUSTOMER shall be responsible.

Should CUSTOMER not pay the applicable Support and Maintenance Fee when due, then SAVISION shall be entitled to charge CUSTOMER interest at a rate of 1.5% percent (19.57% per annum) or the maximum rate permitted by law, whichever is lower, on the outstanding amounts, calculated from the date that they were due to SAVISION and if CUSTOMER is more than thirty (30) days late in the payment of the Support and Maintenance Fee or any other sum due to SAVISION pursuant to this Support and Maintenance Agreement or any other agreement between SAVISION and CUSTOMER, SAVISION, may at its discretion, suspend performance under this Support and Maintenance Agreement or any other related agreements.

CUSTOMER shall not withhold or deduct any amounts from, or set-off amounts owed by SAVISION or a SAVISION licensor or PARTNER to CUSTOMER against any amounts invoiced by SAVISION or a SAVISION licensor or PARTNER under this Support and Maintenance Agreement.

## 9. Agreement Re-activation

In the event that CUSTOMER has purchased a perpetual license, fails to renew this Support and Maintenance Agreement prior to expiry and wishes to renew this Support and Maintenance Agreement, CUSTOMER will be charged as follows:

Time Frame Following Expiry	Reactivation
1st month	USD/CAD*\$500
2nd - 12th month	USD/CAD*\$500 + 100% of the Support and Maintenance Fee in effect at the time of the renewal
> 12th month	License Fee in respect of a perpetual license and the Support and Maintenance Fee in effect at the time of the renewal

\*Currency of location of CUSTOMER.

## 10. Warranty

10.1 **Warranty.** SAVISION warrants to CUSTOMER that it will perform its obligations hereunder in a professional and workmanlike manner.

10.2 **Disclaimer.** Other than the limited warranty set forth above and any warranty applicable to Software under the EULA, SAVISION makes no warranty, representation or promise not expressly set forth in this Support and Maintenance Agreement with respect to support, services or the Software whether express, implied, statutory or otherwise, including but not limited to all implied warranties or implied conditions of merchantability, fitness for a particular purpose and non-infringement. SAVISION does not warrant that the Software will operate without interruption or will be error-free, or that all errors may be corrected.

## 11. Limitation of Liability

IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF SAVISION OR ITS LICENSORS, SUPPLIERS, PARTNERS AND RESELLERS (OR EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AFFILIATES) TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY DAMAGES EXCEED THE SUPPORT AND MAINTENANCE FEES PAID BY CUSTOMER IN THE [TWELVE (12)] MONTHS PRECEDING THE DATE OF THE CLAIM. IN NO EVENT WILL SAVISION OR ITS LICENSORS, SUPPLIERS, PARTNERS OR RESELLERS (OR EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AFFILIATES) BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOSS OF REVENUE OR PROFIT, LOSS OF OR DAMAGE TO DATA OR OTHER COMMERCIAL OR ECONOMIC LOSS, WHETHER BASED ON BREACH OF CONTRACT, EQUITY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT SAVISION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN THIS SECTION 11 WILL SURVIVE AND APPLY, WHETHER OR NOT THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM OR A FUNDAMENTAL BREACH AND EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS SUPPORT AND MAINTENANCE AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY OF CERTAIN DAMAGES, SO THESE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

## **12. Term and Agreement Termination**

12.1 If CUSTOMER is receiving Support and Maintenance as part of a term license, then this Support and Maintenance Agreement shall remain in effect for the term of such license as set out in the Order Form, provided CUSTOMER has paid all applicable License Fees. If CUSTOMER has purchased a perpetual license and has ordered Support and Maintenance on a term basis, then this Support and Maintenance Agreement shall remain in effect for one (1), two (2), or three (3) years from the Effective Date, as set out in the Order Form provided CUSTOMER has paid all applicable Support and Maintenance Fees. The parties may, upon mutual agreement at least thirty (30) days before the end of the then current term, renew this Support and Maintenance Agreement for additional one (1), two (2), or three (3) year terms.

12.2 Notwithstanding any provisions contained herein, this Support and Maintenance Agreement may be terminated with immediate effect by either party upon written notification by the party not in default if any of the following events take place:

(i) if the other party is, at any time, in default under this Support and Maintenance Agreement and, if such default is capable of cure, fails to cure such default within thirty (30) days upon the receipt of a written notification from the other party specifying such default; or

(ii) if either party is for any reason (other than a reason directly attributable to the other party) prevented from performing its obligations hereunder for a period of three (3) months or for a total period of six (6) months in any period of twelve (12) consecutive months.

12.3 Notwithstanding any provisions contained herein, this Support and Maintenance Agreement may be terminated with immediate effect by SAVISION upon written notification by SAVISION to CUSTOMER if any of the following events take place:

(i) if CUSTOMER becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of its creditors, files or has filed against it by a third party any petition under any bankruptcy act, or an application for a receiver of

CUSTOMER is made by anyone and such petition or application is not resolved in favor of CUSTOMER within sixty (60) days; or

(ii) if CUSTOMER does not pay the Support and Maintenance Fees or pays later than sixty (60) days after the date the Support and Maintenance Fees are due and payable, and without prejudice to any other rights SAVISION may have under this Support and Maintenance Agreement or the law.

12.4 Notwithstanding anything contained in this Support and Maintenance Agreement to the contrary, SAVISION may also, in its sole discretion, terminate or suspend access to the Support at any time if CUSTOMER's access to the Software pursuant to the EULA is terminated or suspended.

12.5 If any of these events occur, termination shall become effective forthwith or on the date set forth in the written notice of termination.

12.6 Notwithstanding Section 12.4, this Support and Maintenance Agreement shall automatically and immediately terminate, without further action or notice, upon termination of the EULA.

## **13. General**

(a) Governing Law (United States). If CUSTOMER is located in the United States, this Support and Maintenance Agreement shall be construed under and governed by the laws of New York, including its Uniform Commercial Code, without reference to conflict of laws principles. CUSTOMER consents and agrees that the courts of New York shall have the exclusive jurisdiction over any legal action or proceeding arising out of or relating to this Support and Maintenance Agreement, and CUSTOMER consents to the jurisdiction of such courts for any such action or proceeding and CUSTOMER agrees that CUSTOMER will pay to SAVISION all legal costs and disbursements incurred by SAVISION in enforcing this Support and Maintenance Agreement.

Governing Law (Canada). If CUSTOMER is located in Canada, this Support and Maintenance Agreement shall be construed under and governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without reference to conflict of laws principles. CUSTOMER consents and agrees that the courts of the Province of Ontario, in Ottawa, Canada, shall have exclusive jurisdiction over any legal action or proceeding arising out of or relating to this Support and Maintenance Agreement, and CUSTOMER consents to the jurisdiction of such courts for any such action or proceeding and CUSTOMER will pay to SAVISION all legal costs and disbursements incurred by SAVISION in enforcing this Support and Maintenance Agreement.

General. Notwithstanding the foregoing, nothing in this Support and Maintenance Agreement shall prevent SAVISION from seeking injunctive relief from, or bringing a claim or enforcing a judgment in, a court of competent jurisdiction within or outside of New York or the Province of Ontario. No choice of laws rules of any jurisdiction shall apply to this Support and Maintenance Agreement. CUSTOMER waives all rights that CUSTOMER may have or that may hereafter arise to contest the jurisdiction of such courts. The parties waive any right to a jury trial with respect to any action brought in connection with this Support and Maintenance Agreement. The parties agree that none of the obligations herein will be governed by the United Nations Convention on Contracts for the International Sale of Goods.

(b) **Notices.** All notices required by or relating to this EULA will be in writing and will be sent by electronic mail to SAVISION to the attention of the Legal Department at: itops-contracts@martello.com; and to CUSTOMER at the email address set out in the Order Form.

(c) **Basis of Bargain.** Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Support and Maintenance Agreement are materially bargained for and that such warranty disclaimers and liability and remedy limitations have been taken into account and reflected in determining the consideration to be given by each party to enter into this Support and Maintenance Agreement.

(d) **Assignment and Subcontracting.** CUSTOMER may not assign this Support and Maintenance Agreement or any rights or obligations hereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of SAVISION. SAVISION may freely assign or subcontract this Support and Maintenance Agreement and upon any such assignment shall be fully released from all of its obligations hereunder. Subject to the foregoing, this Support and Maintenance Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Any attempted assignment in violation of this Section shall be void.

(e) **Force Majeure.** Notwithstanding anything else in this Support and Maintenance Agreement, and except for the obligation to pay money, no default, delay or failure to perform on the part of either party shall be considered a breach of this Support and Maintenance Agreement if such default, delay or failure to perform is shown to be due to causes such as strikes, lockouts or other labor disputes, riots, civil disturbances, actions or inaction of governmental authorities or suppliers, epidemics, war, embargoes, severe weather, fire, flood, earthquakes, acts of God or the public enemy, disasters, default of a common carrier, or similar causes beyond reasonable control of the party charged with a default ("Force Majeure"). A failure due to Force Majeure shall only be excused to the extent of the duration of such Force Majeure and a reasonable time thereafter.

(f) **Partial Invalidity.** If any provision in this Support and Maintenance Agreement is held to be invalid or unenforceable in any jurisdiction in which this Support and Maintenance Agreement is being performed, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Support and Maintenance Agreement, which shall remain in full force and effect. In such event, the parties shall negotiate, in good faith, a substitute, valid and enforceable provision which most nearly effects the parties' intent in entering into this Support and Maintenance Agreement.

(g) **Modification.** SAVISION may, from time to time, give CUSTOMER written notice of amendments to this Support and Maintenance Agreement. Any such amendment will automatically become a part of this Support and Maintenance Agreement thirty (30) days from the date of such notice, unless otherwise specified in the notice.

(h) **Waiver.** Failure or neglect by SAVISION to enforce any of the provisions hereof at any time shall not be construed or deemed to be a waiver of SAVISION's rights hereunder nor in any way affect the validity of the whole or any part of this Support and Maintenance Agreement nor prejudice SAVISION's rights to take subsequent action. The express waiver by SAVISION of any provision, condition or requirement of this Support and Maintenance Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

(i) **Publicity.** Neither party shall: (i) disclose the existence or terms of this Support and Maintenance Agreement to any third party or make any press release or other public



communication (other than to an affiliate or except where required by applicable law or regulation); or (ii) use the names or trademarks of the other party, without the prior written consent of such party, such consent to be in such party's sole and absolute discretion.

(j) **Entire Agreement.** This Support and Maintenance Agreement (including the Order Form and EULA), constitute the entire agreement between the parties and supersede all previous and contemporaneous agreements and understandings, whether oral or written, with respect to the subject matter hereof.

(k) **English Language.** The parties hereto have requested that this Agreement and all correspondence and all documentation relating to this Support and Maintenance Agreement, be written in the English language. Les parties aux présentes ont exigé que la présente entente, de même que toute la correspondance et la documentation relative à cette entente, soient rédigées en langue anglaise.

(l) **Independent Contractors.** The relationship of the parties established by Support and Maintenance Agreement is that of independent contractors, and nothing contained in this Support and Maintenance Agreement should be construed to give either party the power to direct or control the day-to-day activities of the other.

(m) **Third Party Beneficiary.** SAVISON's PARTNERS and resellers are third party beneficiaries to the rights reserved for SAVISON under this Support and Maintenance Agreement, and by entering into this Support and Maintenance Agreement, SAVISON shall be deemed to have accepted such on behalf of its PARTNERS and resellers. Except to the extent expressly set forth herein, there are no third party beneficiaries to this Support and Maintenance Agreement.

(n) **Arbitration.** In the event a dispute arises between the parties hereto arising out of or in connection with or with respect to this Support and Maintenance Agreement or any breach thereof, such dispute shall be determined and settled by arbitration: (i) if CUSTOMER is located in the United States, the arbitration shall be conducted in New York, New York, in accordance with the rules of the American Arbitration Association ("AAA"); and (ii) if CUSTOMER is located in Canada, the arbitration shall be conducted in Ottawa, Ontario, in accordance with the Arbitration Act, 1991 (Ontario). The award rendered thereon by the arbitrator shall be final and binding on the parties thereto, and judgment thereon may be entered in any court of competent jurisdiction. Nothing in this Section shall prevent either party from applying to a court of competent jurisdiction for equitable or injunctive relief.

(o) **Further Assurances.** CUSTOMER shall execute and deliver all such further documents and instruments and do all acts and things as SAVISON may reasonably require to carry out the full intent and meaning of this Support and Maintenance Agreement.

## **For more information**

For more information contact us at [itops-sales@martellotech.com](mailto:itops-sales@martellotech.com).