

BROWSIUM PRODUCT MAINTENANCE & SUPPORT AGREEMENT

To the extent Browsium has become obligated for support, the following will apply with respect to software Products so long as they remain Browsium's standard terms and the Licensee is in full compliance with the Agreement. Capitalized terms not defined below have the same meaning as in Browsium's standard Software License Terms.

1. SCOPE OF SERVICE

The Maintenance & Support Services as defined in Section 3 below shall apply only to the Browsium software described in Appendix A attached hereto.

2. SUPPORT INTERFACES

Licensee shall designate (in Appendix A if attached, or when first registering for Maintenance & Support Services on Browsium's Support Site <http://www.browsium.com/support>) a limited number of contact persons to act as the exclusive contact with Browsium with respect to the performance of obligations under this Agreement ("Licensee Contacts"). Authorized use of the Maintenance & Support Services is limited to these persons. Licensee may replace its contacts upon ten (10) days prior written notice to Browsium.

3. DESCRIPTION OF MAINTENANCE & SUPPORT SERVICES

3.1 Browsium Product Maintenance & Support. Provided that all amounts due and payable under this Agreement have been made to Browsium, Browsium shall use commercially reasonable efforts to provide to Licensee Maintenance & Support services that shall consist of, and be limited to, advice and assistance regarding: (a) the operational use by Licensee of the Software; (b) suspected Errors (as defined in Section 3.2 below) with the Software or documentation; (c) the identification and verification of the causes of suspected Errors with the Software or documentation; (d) detours and work-arounds for identified Errors, where reasonably possible; and (e) the features and capabilities of the Software and documentation; Browsium shall also provide Updates and Upgrades to the Software as defined in and in accordance with Section 3.5 (all of the foregoing, collectively, "Maintenance & Support Services"). Browsium is under no obligation to provide Maintenance & Support Services to Licensee for Software not in current release or the prior release, per Browsium's Product Support Lifecycle as defined in the Browsium Knowledge Base on the Browsium website. Browsium reserves the right, in its sole discretion, to perform Maintenance & Support Services by means of making available to Licensee a later release of the Software. Browsium is not responsible to provide Maintenance & Support Services to Licensee's end users or anyone other than the designated Licensee Contacts.

3.2 Provision of Maintenance & Support Services. In the provision of the Maintenance & Support Services, Browsium will use commercially reasonable efforts to provide remote telephonic, email, and website support during the periods set forth in Section 3.4 for the applicable level of support, which will consist of: (a) receiving the Licensee communication, recording it and sending a confirmation of receipt to Licensee; (b) qualifying the problem; (c) providing a first-level analysis employing Browsium's FAQ software tool to assess and resolve the problem to the extent possible; (d) providing a written action plan to Licensee to resolve the problem or provide a temporary solution; and (e) undertaking an escalation procedure that will be utilized if no resolution or temporary solution is promptly available. Browsium will also provide a second level support, which will consist of: (i) undertaking an in-depth analysis remotely or via mirrored configuration located at Browsium premises; (ii) providing a detailed written status and recommendations to Licensee; (iii) launching and testing corrective maintenance tasks; and (iv) undertaking an escalation procedure if no solution is furnished at this stage.

3.3 Classification of Errors. Any Errors reported in the Software will be categorized, in Browsium's sole discretion, as follows:

"Severe" means that Licensee's business is stopped and Licensee's users cannot make any progress in their work (excluding any test and development activities) due to the Software;

“Serious” means that Licensee’s business is restricted due to the Software but users can carry out work with significant difficulty or delay;

“Minor” means all other problems with the Software.

“Error” means any mistake, problem, defect, malfunction or deficiency which causes behavior of the Software which is non-compliant with its specifications. In the provision of the Maintenance & Support Services, Licensee’s sole and exclusive remedy for resolving Errors and Brownsium’s sole obligation is that Brownsium shall use commercially reasonable efforts to provide corrections, detours or work-arounds for any reproducible Errors. Brownsium, however, does not warrant that any Error is capable of complete remedy.

3.4 Commitments on Availability and Response Time.

Maintenance & Support Services will be available twenty-four (24) hours per day, seven (7) days a week.

Brownsium shall use commercially reasonable efforts to respond to Errors solely in accordance with the following schedule:

<u>Severity</u>	<u>Response time</u>
Severe	<4 hours response
Serious	<8 hours response
Minor	<24 hours response

3.5 Updates and Upgrades to the Software. For paid licenses, and provided that all License Fees and Maintenance & Support Fees that are due and payable under the License Agreement and this Agreement have been paid to Brownsium, Brownsium will provide Updates and Upgrades (defined below) to Licensee at no additional charge, to the extent any Updates and Upgrades are available and in general commercial distribution in accordance with Brownsium’s release schedule. Updates and Upgrades shall be supplied in object code form and made available by electronic delivery or download. Brownsium will also provide updated electronic copies of reference manuals and written materials to Licensee, if any exist.

All Error corrections, modifications, bug fixes, patches, and other Updates and Upgrades provided to Licensee under this Agreement shall be deemed “Software” and subject to all of the terms and conditions of the applicable License Agreement.

- a) “Update” means an error correction, bug fix, patch or other correction or modification to a current version of the Software that does not otherwise add functionalities to the Software or to the relevant documentation, which Brownsium in its discretion designates as such and makes generally commercially available without an additional charge. Updates do not include any new features, functionality or components that are made available by Brownsium as separate products or for additional fees; and
- b) “Upgrade” means a new release of the Software that adds functionalities to the Software or to the relevant documentation, which Brownsium in its discretion designates as such and makes generally commercially available to Licensees without an additional charge. Upgrades do not include any new features, functionality or components that are made available by Brownsium as separate products or for additional fees.

4. OBLIGATIONS OF LICENSEE

During the term of this Agreement Licensee shall: (1) use commercially reasonable efforts to use only the then current release of the applicable Software; (2) ensure that the then current release is used in accordance with the applicable documentation and only by competent, trained employees or by persons under their supervision; (3) always perform Licensee Support Obligations (as defined below) and use all reasonable efforts in the initial problem identification and isolation obligations; (4) keep full security copies of the current release, Licensee databases and Licensee computer records in accordance with best computing practices; (5) not request, permit or authorize anyone other than Brownsium or Brownsium’s designees to provide any support services with respect to the Software or any Updates thereto; (6) co-operate fully with Brownsium personnel in the diagnosis of any Error or defect in the current release or documentation; (7) make available to Brownsium, free of charge, all information, facilities, and services reasonably required by Brownsium to enable Brownsium to perform the Maintenance & Support Services, including without limitation computer runs, memory dumps, printouts, data preparation, office accommodation, typing and photocopying; and (8) provide such telecommunication and

remote access facilities as are reasonably required by Browsium for testing and diagnostic purposes at Licensee's expense. "Licensee Support Obligations" shall mean: (a) generating a response to inquiries by Licensee's end users, either electronically or via telephone; and (b) the identification of system level Errors, and isolating such Errors. Licensee's failure to comply with the terms of this Section will relieve Browsium of its obligations in connection with any such failure.

5. ADDITIONAL SERVICES

Browsium may also offer Licensee additional services at such charges and upon such terms and conditions as provided by Browsium to Licensee upon request. Examples of additional services include: (1) system integration and associated services for the Software; (2) consultation for resolution of problems experienced by Licensee in operating the Software for problems not covered by this Agreement; (3) consultation on, development of, and installation of, Updates and Upgrades; (4) preventive maintenance; (5) training; and (6) on-site support. Browsium will not provide any additional service until the parties have executed a separate written agreement setting forth the charges and terms and conditions therefor. These additional services are available by executing (as applicable) a:

- a) Browsium Consulting Services Agreement.

6. PRICES AND PAYMENT

6.1 Prices. In consideration of the Maintenance & Support Services provided hereunder, Licensee shall pay to Browsium a fixed annual Maintenance & Support Fee in the amount specified below. Prices in this Agreement do not include any applicable sales, use, ad valorem, or similar taxes regardless of the taxing authority (collectively, "Taxes"). All Taxes (excluding taxes imposed on Browsium's income) shall be paid by Licensee unless there is an applicable exemption from such Tax, with written confirmation of such Tax exemption to be provided to Browsium upon request. To the extent Browsium is required by law to collect such Taxes, Browsium may bill separately for such Taxes or add such Taxes to invoices as separately stated charges. Licensee shall pay all Taxes in full in accordance with this Section 6, unless Licensee is exempt from such Taxes and furnishes Browsium with a valid certificate of exemption in a form reasonably acceptable to Browsium. Licensee shall indemnify, defend, and hold Browsium harmless from any and all assessments levied by a proper taxing authority for such Taxes, including any interest, penalties, or late charges due to Licensee's failure to perform hereunder.

6.2 Maintenance & Support Fee. The annual fee applicable for each level of Maintenance & Support Services ("Maintenance & Support Fee") shall be agreed upon by the parties as a specific percentage of the total, upfront Software License Fee for the applicable Products, Enterprise, Seats or Site(s), or as a flat, annual fee.

6.3 Payment. The Maintenance & Support Fee shall be invoiced yearly in advance on the anniversary date of the Agreement. All invoices shall be due and payable upon receipt by Licensee. Amounts payable shall accrue interest, at the lesser of one and one-half percent (1½%) per month or the maximum allowable interest under applicable law, commencing thirty (30) days after Licensee's receipt of the invoice until paid in full.

7. SUPPORT SERVICES EXCLUSION

7.1 General Exclusions. Maintenance & Support Services do not include installation, hardware, operating system or any environment support.

7.2 Specific Exclusions. The following services are expressly excluded from the scope of this Agreement: (a) Software that has been altered, damaged or modified or if any portion of the Software has been incorporated with or into other software without Browsium's prior written consent; (b) significant modifications to Licensee's operating system or environment from those applicable at the time the Software was released; (c) Software that has been used under abnormal conditions or not in accordance with the instructions provided in the applicable documentation or any additional instruction provided by Browsium; and (d) malfunctions due to reasons external to the Software including, but not limited to, failure or fluctuation of electrical supplies, hardware features, accidents or natural disasters. For any of the preceding cases Browsium may, in its sole discretion, determine whether to intervene to resolve the problem.

8. WARRANTY DISCLAIMER

THE MAINTENANCE & SUPPORT SERVICES ARE PROVIDED "AS IS" AND BROWSIUM DISCLAIMS ALL INDEMNITIES AND WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. LIMITED LIABILITY

TO THE FULLEST EXTENT PERMITTED BY LAW, BROWSIUM AND ITS SUPPLIERS SHALL UNDER NO CIRCUMSTANCES BE HELD LIABLE, WHETHER IN CONTRACT, IN TORT, IN EQUITY, UNDER ANY WARRANTY, STATUTE OR GOVERNMENTAL REGULATION, OR ANY OTHER THEORY OF LIABILITY, FOR ANY EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, SUCH AS, WITHOUT LIMITATION, LOSS OF REVENUE OR SAVINGS, LOSS OF OPPORTUNITY, BUSINESS DISRUPTION, OR OTHER PECUNIARY LOSS ARISING OUT OF THE PROVISION OF MAINTENANCE & SUPPORT SERVICES OR BROWSIUM'S ACTIONS UNDER THIS AGREEMENT, EVEN IF BROWSIUM AND/OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE. BROWSIUM'S ENTIRE LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT, UNDER ANY WARRANTY OR ANY OTHER THEORY OF LIABILITY SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY LICENSEE DURING THE SIX MONTHS PRIOR TO THE DATE WHICH GAVE RISE TO SUCH DAMAGES. FURTHERMORE, BROWSIUM AND ITS SUPPLIERS SHALL UNDER NO CIRCUMSTANCES BE HELD LIABLE FOR DATA LOSS, FILE DATABASE LOSS, OR PROGRAM DEGRADATION ARISING OUT OF OR RELATING TO THE MAINTENANCE & SUPPORT SERVICES, MATERIALS OR PRODUCTS OR OTHER BROWSIUM ACTIONS UNDER THIS AGREEMENT. LICENSEE ACKNOWLEDGES THAT IT IS LICENSEE'S RESPONSIBILITY TO MAKE ALL NECESSARY SAFEGUARDS AND COPIES OF SUCH DATA, FILES, AND PROGRAMS. TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, BROWSIUM SHALL NOT BE HELD LIABLE FOR ANY THIRD PARTY ACTIONS AND, IN PARTICULAR, IN CASE OF ANY SUCCESSFUL EFFORT TO DEFEAT OR DISABLE SECURITY FUNCTIONS OF ANY SOFTWARE THAT IS PART OF THE PRODUCTS, OR COMPUTING DEVICES AND EQUIPMENT USING, ACCESSING, OR INCORPORATING SUCH SOFTWARE.

10. CONFIDENTIALITY OF MAINTENANCE & SUPPORT SERVICES

The Software, Updates, Upgrades, advice, assistance and all other information provided by Browsium in connection with the Maintenance & Support Services shall be deemed "Confidential Information" of Browsium.

11. FORCE MAJEURE

No liability shall be incurred by either party by reason of non-performance or delay in performance of any obligation (except for non-payment by Licensee) caused by Force Majeure, at least for the duration of the Force Majeure; provided however that the affected party shall notify the other Party of the existence thereof and the effect upon its ability to perform its obligations. As used herein, the term "Force Majeure" shall mean and include, without limitation, any act of God, industry wide strikes, explosion, fire, flood, war and other hostilities, acts of terrorism, civil unrest, governmental acts, regulations, or orders, inadequate supply of raw materials, components, labor or energy, or any other circumstance of a similar nature beyond the reasonable control of the affected party.

12. TERMINATION & RENEWAL

12.1 Termination. Subject to the terms hereof, this Agreement will be effective for an initial period of one (1) year after the Effective Date of this Agreement. Browsium may suspend or terminate this Agreement immediately by written notice to Licensee if: (a) Licensee breaches its obligations in Section 4 or Section 10; (b) Licensee fails to pay any Maintenance & Support Fees within thirty (30) calendar days after the due date. Either party may terminate this Agreement by written notice to the other party: (a) if the other party has breached any of its other material contractual obligations and has failed to remedy such breach within thirty (30) business days of a written request, giving full particulars of the breach, to remedy the same, (b) immediately, if the other party makes any assignment for the benefit of creditors or is insolvent, or (c) immediately, if any proceedings are instituted by or against the other party in bankruptcy or under any insolvency laws

or for reorganization, receivership or dissolution.

12.2 Effect of Termination. Upon termination of this Agreement, Licensee shall promptly, as Browsium may direct, return or destroy any Software, Updates and all other materials delivered to Licensee hereunder. Termination of this Agreement shall not affect: (a) the obligation of Licensee to pay to Browsium any fees or other payment which may be due and unpaid at the date of termination; or (b) Sections 8, 9, 10, 11, 12.2 and Sections 13 through 17 of this Agreement, and any other provisions of this Agreement that by their nature should survive termination or expiration of this Agreement. In case of termination of this Agreement for any reason other than material breach by Browsium, Licensee shall not be entitled to a refund of any Maintenance & Support Fees.

12.3 Renewal. The initial chargeable term of Maintenance and Support will commence on the date specified on the cover sheet of this agreement, or on the date of Browsium's invoice for Maintenance & Support Services if no cover sheet date is provided, and shall continue for a period of twelve (12) months. Thereafter, Maintenance and Support Services will automatically renew for additional twelve (12) month periods, provided that Licensee may discontinue Maintenance & Support Services at any time by providing Browsium written notice at least thirty (30) days prior to the expiration of the then current term of Maintenance & Support. Browsium shall provide Licensee with notice of renewal at least sixty (60) days prior to the expiration of the then current term of Maintenance & Support. In no event will Licensee be required to purchase or renew Maintenance and Support for all or any of the Software and cancellation of Maintenance & Support shall in no way affect the Software licenses granted hereunder. Maintenance & Support fees for any additional Software purchased of the same name shall be prorated according to the amount of time remaining in the 12-month period of Maintenance & Support then in effect for the previously purchased Software (in order that the term of Maintenance & Support for any additional Software units purchased be coterminous with the previously purchased Software); as a result, Maintenance & Support may be less than the above proscribed 12-month period.

13. ASSIGNMENT

Licensee may not assign the Agreement, in whole or in part, without the prior consent of Browsium and any purported assignment shall be void. Browsium may in its sole discretion, assign its rights or delegate its duties hereunder, without the consent of Licensee, to: (1) any entity resulting from any merger, consolidation or other reorganization to which Browsium is a party; (2) any corporation, partnership, association or other entity or person to which Browsium may transfer all or substantially all of its assets; or (3) any entity that controls, is controlled by or is under common control with Browsium. All the terms and provisions of this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and permitted assigns.

14. DISPUTE RESOLUTION; GOVERNING LAW

14.1 Where a dispute arises out of or in connection with this Agreement ("Dispute"), the parties shall attempt to settle any claim or controversy through consultation and negotiation in good faith and in the spirit of mutual cooperation.

14.2 This Agreement and all Disputes shall be governed by the laws of the State of Washington excluding its conflicts of law principles. Exclusive jurisdiction and venue for any claim relating to this Agreement shall lie with the courts of located in King County, Washington. Each party waives any objection based on venue or inconvenient forum and hereby consents to the personal jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The substantially prevailing party in any action to enforce this Agreement will be entitled to recover its attorney's fees and costs in connection with such action.

14.3 Waiver of Right to Jury Trial. Each of the parties to this Agreement hereby knowingly, voluntarily and intentionally waives, to the extent permitted by law, any right (whether under federal, state, local or foreign law or statute) to a trial by jury in any litigation or proceeding in a state or federal court with respect to, in connection with, or arising out of this agreement or any instrument or document delivered in connection with this agreement or the transactions contemplated hereby, or the validity, protection, interpretation, collection or enforcement thereof, or any other claim or dispute howsoever arising (including tort claims and claims for breach of duty), between the parties hereto. Each of the parties hereto acknowledges and agrees that it has received full and sufficient consideration for this provision and that this provision is a material inducement for Browsium's acceptance of this Agreement.

15. GENERAL PROVISIONS

This Agreement and its exhibits contain the entire understanding and agreement between the parties respecting the subject matter hereof. This Agreement may not be supplemented, modified, amended, released or discharged except by an instrument in writing signed by each party's duly authorized representative. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this Agreement or of any subsequent default or breach of the same or a different kind. If any provision in this Agreement is found to be illegal, invalid or unenforceable in any jurisdiction, for any reason, then, to the full extent permitted by law: (1) all other provisions will remain in full force and effect in such jurisdiction and will be construed in order to carry out the intent of the parties hereto as nearly as possible; (2) such invalidity, illegality or unenforceability will not affect the validity, legality or enforceability of any other such provisions hereof; and (3) any court or arbitrator having jurisdiction will have the power to reform such provisions to the extent necessary for such provision to be enforceable under applicable law. All notices, authorizations, and requests in connection with this Agreement shall be deemed given (i) five days after being deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (ii) one day after being sent by a nationally recognized overnight courier, charges prepaid; and addressed as first set forth above or to such other address as the party to receive the notice or request so designates by written notice to the other. Software, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Software. The relationship of Browsium and Licensee established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to: (1) give either party the power to direct and control the day-to-day activities of the other; (2) constitute the parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking; or (3) allow either party to create or assume any liability or obligation on behalf of the other party for any purpose whatsoever.

BROWSIUM PRODUCT MAINTENANCE & SUPPORT AGREEMENT - APPENDIX A

1. DESCRIPTION OF SOFTWARE:
2. MAINTENANCE & SUPPORT SERVICES CONTACTS

Support Interfaces

As stated in Section 2 of the Agreement, the Licensee designates the following contact points to serve as interfaces authorized to call Browsium for the Maintenance & Support Services:

Name:
Direct Telephone:
Mobile Telephone:
Email: