

## MAINTENANCE TERMS AND CONDITIONS KARTOTRAK SOFTWARE SOLUTION

### INTRODUCTION

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As part of its business activities, Licensee has acquired a License from Geovariances to use the Kartotrak Software and wishes to benefit from the Maintenance services under the terms and conditions set out in these Terms and Conditions, supplemented by the Specific Terms.

### ARTICLE 1. DEFINITIONS

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The words beginning with a capital letter used in the body of the Terms, including its introduction, whether in singular or plural form, shall have the meanings given to them below.

**Error** means any malfunction, problem or incident, reproducible by Geovariances, leading to a deterioration in performance or non-conformity of the Software with its Documentation.

**Fatal Error** means any Error that affects the overall functioning of the Software and prevents its operation.

**Semi-Fatal Error** means any Error that, without crippling the operation of the Software, prevents the use of certain features.

**Minor Error** means any error that is not Fatal or Semi-Fatal.

**Specific Terms** means the document specifying, in particular, the name of the Software, the type of license selected, the duration, and the corresponding financial terms and conditions. The Specific Terms supplements the Maintenance Terms and Conditions to which it is entirely subject and collectively these form the Agreement.

**Terms** means these Terms and Conditions, accepted by Licensee and supplemented by the Specific terms. The signing of the Specific Terms implies full acceptance of the Terms.

**Agreement** means collectively (i) these Maintenance Terms and Conditions and (ii) the Specific Terms approved by Licensee, to the exclusion of any other document.

**Documentation** means the documentation for using the Software downloaded by Licensee and subject to the License. The Documentation defined by Geovariances includes, the installation's manuals, the functional specifications of the Software, the user's manuals and all other documentation necessary (including technical documentation) or useful to use the Software, examples given for information purpose only.

**Software** means the version of Kartotrak Software that is the object of the Maintenance services.

**License** means the separate Agreement by which Licensee has acquired the rights to use the Software.

**Maintenance** means the services of corrective and adaptive maintenance of the Software, the purpose of which is to maintain the level of reliability and performance of the Software and its technical and functional development, performed by Geovariances under an obligation of best effort (*obligation de moyens*). Geovariances expressly reserves the Maintenance of the Software for itself.

**Update** means any change in the Software provided by Geovariances under the Maintenance services, which may include one or more Error correction(s), involving no substantial change in its functionality.

**New version** means any version of the Software including a substantial change in its functionality, one or more developments or new features, and integrating the Updates made since the previous version.

**Site** means the geographical location(s) of installation of the Software. The Site(s) are specified in the Specific Terms.

### ARTICLE 2. PURPOSE OF THE AGREEMENT

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The purpose of this agreement is to define the terms and conditions of the Kartotrak Software Maintenance.

### ARTICLE 3. CONTRACT DOCUMENTS

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The contract documents are, in order of decreasing importance, (i) the Maintenance Terms and Conditions and (ii) the Specific Terms. In case of conflict, the higher-ranking document shall prevail for the obligation in question. Any changes to a contract document must be made by written agreement signed by the Parties.

### ARTICLE 4. DURATION OF THE AGREEMENT

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The Maintenance Terms and Conditions will take effect on the date of the Specific Terms, for the duration stipulated therein. Unless otherwise provided in the Specific Terms and subject to any termination of the Agreement under the "Termination" clause, the Agreement is concluded for a duration of one (1) year and shall be automatically renewed under the same conditions unless terminated by either Party through notification of the other Party via a letter received no later than three (3) months before the expiration of the current annual term.

## ARTICLE 5. USE OF THE SOFTWARE

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The Software shall be installed and used only under the direction, control and liability of Licensee, which is responsible for taking all appropriate measures to guard against any harmful consequences arising from the use of the Software. Licensee is solely responsible for the quality, legality, integrity, confidentiality, relevance and preservation of its data, files, content and applications loaded or operated by Licensee using the Software. It will back these up on a regular basis under its sole responsibility. Geovariances recommends a daily backup. Geovariances does not provide any backup or data recovery services.

## ARTICLE 6. IT AND DATA ENVIRONMENT

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Licensee is solely responsible for setting up an electronic communications link allowing it to enjoy the benefits of remote maintenance services provided for in the Agreement.

Licensee may alter the Site and/or IT environment of the Software installation by informing Geovariances in advance of its plans via a letter. Geovariances shall then communicate to Licensee any technical and financial consequences of the change, particularly as regards the Maintenance services, which Licensee agrees to accept in order to receive the services in its new environment. In the absence of prior notification, Geovariances disclaims any liability for the proper functioning of the Kartotrak Software or performance of the Maintenance services, as well as for any guarantees.

## ARTICLE 7. MAINTENANCE OF THE KARTOTRAK SOFTWARE

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### 7.1 Reporting Errors

Licensee shall promptly report any Errors that it notices, preferably by email at support-kartotrak@geovariances.com, and indicate the circumstances in which it arose. As such, Licensee will refer to the Software Documentation before any reporting, so as to accurately and comprehensively describe the observed Error.

### 7.2 Technical Assistance

Licensee may contact Geovariances for any issue related to the use of the Software. In case of repeated requests for assistance, Geovariances may offer Licensee training services on the Software.

Unless otherwise specified in the Specific Terms, Geovariances offers a support service to Licensee during French business days and hours and in countries where Geovariances is settled.

### 7.3 Corrective Maintenance

Corrective Maintenance consists in Geovariances correcting or circumventing any Error occurring in the proper use of the Software. Geovariances performs Maintenance only on the latest version of the Software.

When an Error is reported, Geovariances runs a diagnostic. If the diagnostic shows the existence of an Error attributable to the Software, Geovariances will attempt to correct it via phone or remote maintenance. The correction may consist of an Update sent to Licensee by remote maintenance.

In case of a Fatal Error, Geovariances strives to provide the Licensee a workaround solution pending a final correction, within two (2) working days. For all other Errors, Geovariances strives to provide a correction as soon as possible, or, at its discretion, it may make such correction coincide with the provision of a later version of the Software.

If unsuccessful in resolving the Error, Geovariances and the Licensee will schedule a service call at the Licensee's Site. The travel and accommodation fees will be charged to the Licensee under Schedule of Geovariances prevailing on the date of the intervention.

Each intervention on an Error reported by Licensee will be recorded in an incident report opened at Geovariances and containing information on all procedures followed in handling the Error, until the report's closure. In case of dispute, the incident report shall prevail, which Licensee acknowledges.

### 7.4 Adaptive Maintenance

Adaptive Maintenance consists of providing Licensee with Updates and New Versions of the Kartotrak Software according to the frequency and timing defined by Geovariances.

Updates and New Versions will be made available via remote maintenance. Geovariances will notify Licensee of the availability of an Update or New Version. In case of refusal by Licensee to install the Updates or New Versions of the Kartotrak Software, Geovariances shall be deemed to have fulfilled its Maintenance obligations and reserves the right not to maintain the version of the Software installed on Licensee's IT environment, after having so informed it by mail.

Once made available to Licensee, Updates and New Versions are subject to the provisions of the applicable License ordered by Licensee.

## ARTICLE 8. MAINTENANCE EXCLUSIONS

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Geovariances is not responsible for the Maintenance of the Kartotrak Software in the following cases:

- Licensee's refusal to install the Updates or New Releases provided by Geovariances;
- Licensee's refusal to allow Geovariances access to its IT environment through remote maintenance;
- Licensee's refusal to cooperate with Geovariances in resolving Errors, including answering questions and inquiries from Geovariances;
- use of the Software not in accordance with its purpose, its Documentation or the applicable License;
- unauthorized modification of the Software by Licensee or a third party;
- replacement of all or some of the hardware with hardware that is not compatible with the software package.

In no event shall Geovariances be required under the Maintenance Agreement to be responsible for the following:

- recovery of damaged or lost files or data;
- upgrading of third-party software;
- training on new features of the Kartotrak Software;
- telecommunications costs;
- maintenance costs incurred by Licensee from a third party.

#### **ARTICLE 9. LICENSEE'S COOPERATION**

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Licensee agrees to cooperate with Geovariances to facilitate the Maintenance, and more specifically to:

- designate a single contact for Geovariances who will coordinate reports and be responsible for implementing Geovariances' instructions. This contact shall first be trained in using the Software, and will pool Error reports pursuant to Article 7.1;
- ensure that users of the Software have a level of proficiency and training to use it in accordance with its documentation;
- provide all information that could facilitate research into the causes of an Error;
- provide Geovariances with the specific procedures (security, operating standards, etc.) in place in its company, and remind them of these during each intervention;
- give Geovariances free access to its IT system, particularly for the purposes of remote maintenance;
- back up their data and applications prior to any Geovariances intervention.

Besides, to facilitate the collaboration, the Client has a "Client area" on the website [www.geovariances.com](http://www.geovariances.com)

#### **ARTICLE 10. FINANCIAL TERMS AND CONDITIONS**

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In consideration for the Maintenance, Licensee shall pay Geovariances the fee specified in the Specific Terms.

For any additional services performed by Geovariances at Licensee's request and not expressly mentioned in the Specific Terms, Licensee will be charged at Geovariances' rates in effect on the date of the service under an ad hoc agreement.

Unless otherwise specified in the Specific terms, invoices are payable within thirty (30) days from their date of issuance. Amounts specified are excluding tax.

Any delay in payment will result in the application of late fees equal to the statutory interest rate applied by the European Central Bank on its most recent refinancing operation, increased by ten points, without prior notice and with effect from the date of first delay. Geovariances will charge to the Licensee the recovery costs incurred of a minimal amount of 40 euros. The amount of interest due might be automatically charged to any Geovariances' price reductions. In case of disagreement on part of the invoice, the Licensee is required to pay in due time the undisputed part. Geovariances reserves the right to suspend its services until full payment is received for amounts due.

In addition, in case of failure to pay the fees specified in the Specific Terms, and thirty (30) days after formal notice to cure the default has gone unanswered, all amounts due by Licensee under the Agreement for the current period shall become immediately payable. Furthermore, Geovariances may suspend the Maintenance without prior notification and/or terminate the Agreement pursuant to the "Termination" clause. Sums previously paid under the License by Licensee will be retained by Geovariances, without prejudice to amounts outstanding for the current period. Licensee shall then forfeit any right to Maintenance of the Software.

Article 1223 of the Civil Code is inapplicable between the Parties.

#### **ARTICLE 11. FORCE MAJEURE**

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Neither Party shall be held liable for the failure by either of them to perform some or all of its obligations under the Agreement if such failure results from a force majeure event. "Force majeure" or "fortuitous" events are explicitly those generally recognized under French case law. Initially, the force majeure event shall suspend the execution of the Agreement. If it lasts more than three (3) months, the Agreement shall automatically terminate upon the expiration of that period, unless otherwise agreed by the Parties.

#### **ARTICLE 12. LIABILITY AND INSURANCE**

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The Software shall be installed and used only under the direction, control and liability of Licensee, which is responsible for taking all appropriate measures to guard against any harmful consequences arising from the use of the Software.

In providing its Maintenance services, Geovariances is bound by an obligation of best effort (*obligation de moyens*). Geovariances shall in no event be held liable for indirect, special, incidental, or consequential damages, whether foreseeable or unforeseeable, suffered by Licensee or its customers or partners, including any loss or corruption of data, loss of revenue, loss of customers, lost profits or increased costs and expenses including the cost of recovery of files, business interruption, loss of markets, loss of image, or any compensation paid by Licensee to any third party.

Notwithstanding any other provision of this Agreement, Geovariances' liability towards Licensee shall not exceed the total amount of Maintenance fees actually received by Geovariances during the year underway, as of the date of recognition of its liability. Furthermore, no action may be brought against Geovariances under the Agreement upon expiration of a period of six (6) months following the occurrence of the event causing the damage.

Geovariances holds an insurance policy covering its professional liability and as such is insured for harmful consequences arising from a breach of its contractual obligations, should its liability be established.

## ARTICLE 13. TERMINATION

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### 13.1 Conditions

In case of a breach by either Party of any obligations under the Agreement which is not cured within thirty (30) calendar days of a notice sent by letter notifying the breach involved, the other Party may invoke the termination of the Agreement, without prejudice to any damages which it may claim.

In addition, Geovariences may automatically terminate the Agreement before its term in cases where:

- Licensee undermines the image of Geovariences or its products any manner whatsoever, subject to prior notification of Geovariences;
- Licensee fails to pay any fees under the “Financial Terms and Conditions” clause, and does not cure the situation within thirty (30) days of the notice sent by Geovariences
- Licensee undergoes a change of control, subject to prior notification of Geovariences.

### 13.2 Consequence of the termination and new order

The receipt of the termination letter ends the Maintenance services described in Article 7.

By terminating, the Client loses the profit of preferential financial conditions depending on the number of ordered Licenses. In case he would keep a restricted number of Licenses, new financial conditions will be defined on the basis of the number of maintained Licenses.

In case the Client, after the termination, orders new services of maintenance, Geovariences will charge a sum equivalent in maintenance interruption, plus 50 % of the cost of the maintenance over the same period.

By terminating, the Client also loses the possible advantages related to the seniority of his Contract. Accordingly, the new financial conditions will be calculated on the basis of the current public price rate at the time of the conclusion of the new Specific Terms of Maintenance.

## ARTICLE 14. NON-DISCLOSURE

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Each Party agrees to (i) keep confidential all information it receives from the other Party, (ii) not disclose confidential information of the other Party to any third party other than employees or agents who require such knowledge, and (iii) use the confidential information of the other Party only for the purpose of exercising its rights and performing its obligations under the Agreement.

Notwithstanding the foregoing, neither Party shall have any obligation with respect to information that (i) has fallen or might fall into the public domain through no fault of the receiving Party, (ii) is developed independently by the receiving Party, (iii) is known to the receiving Party before the other Party discloses it thereto, (iv) is duly received from a third party not under an obligation of confidentiality, or (v) is disclosed pursuant to law or a court order (in which case it should be disclosed only to the extent required and after having notified in writing the Party having supplied it).

The Parties' obligations with respect to confidential information shall remain in effect throughout the term of this Agreement and so long, after it ends, as the relevant information remains confidential to the disclosing Party and, in any event, for a period of five (5) years after the term specified in the Specific Terms. Each Party shall return all copies of documents and media containing the other Party's confidential information at the end of the Agreement, regardless of the cause.

More specifically, Licensee shall not disclose any of the Software source code that it may have received under the “Deposit and Access to Source Code” License Terms and Conditions clause.

The Parties also agree to enforce compliance with these provisions by their personnel, and by any representative or other person who might use the Software in any capacity whatsoever. Any violation of this commitment by Licensee would constitute a serious breach of its obligations and render it liable for the damages sustained by Geovariences.

## ARTICLE 15. NON-SOLICITATION OF PERSONNEL

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Each Party shall refrain from hiring or soliciting work from any employee of the other Party, whether directly or through intermediaries, without its express prior consent. This clause shall be valid for the Term of the Agreement and for twelve (12) months following its termination. Where a Party does not respect this obligation, it shall indemnify the other Party by immediately paying, upon simple request, a lump sum equal to twelve (12) times the gross monthly salary of the employee at the time of his departure.

## ARTICLE 16. ENFORCEABILITY AND EVIDENCE

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The version of the Terms in effect can be found on the Geovariences website. Geovariences reserves the right to modify the Terms at any time without notice. In such case, the new version will apply to subsequent Maintenance orders, with current services remaining subject to the version of the Terms in effect at the date of order.

Licensee has the option to save and print these Terms and the Specific Terms using the standard functionalities of its browser or computer.

It is expressly agreed by Licensee that the information received and recorded by Geovariences constitutes proof of the order, particularly as regards the date, the Maintenance services, and, in general, evidence of interventions by Geovariences.

The electronic registers maintained in the Geovariences IT system shall be kept in optimal conditions of security and considered proof of communications, orders and payments between the Parties.

Specific Terms and invoices are stored on a reliable and durable medium which can be produced as evidence. Consequently, invoices sent by email are original documents, which Licensee acknowledges.

In case of contradiction between the French version of these Conditions and the English version, the Parties agree that the French version prevails.

## ARTICLE 17. MISCELLANEOUS

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The Agreement, consisting of the Terms and the Specific Terms, constitutes the entire agreement between the Parties and supersedes all previous documents exchanged between the Parties.

No Party may make any commitment in the name and/or on behalf of the other Party. Furthermore, each Party shall remain solely responsible for its claims, commitments, services, products and personnel.

Should any provision of this Agreement be found void, non-binding or unenforceable by any court of competent jurisdiction, the remaining provisions shall remain valid, binding and enforceable except as otherwise provided by such court. The Parties agree that, in such case, they will in good faith negotiate a replacement provision that is (i) valid, binding and enforceable and (ii) conforms to the original intent of the Parties.

The failure of either Party to invoke a commitment by the other Party to any of the obligations contained herein shall not be construed in the future as a waiver of the obligation question.

The Agreement is subject to French law. Any dispute in connection with the Agreement will first be submitted for amicable settlement via mediation led by a jointly-appointed expert within fifteen (15) days of a written request submitted by either Party. IN CASE OF FAILURE OF SUCH MEDIATION WITHIN A PERIOD OF THREE (3) MONTHS, THE DISPUTE SHALL BE SUBMITTED BY EITHER PARTY TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF PARIS.