

## **SERVICE AGREEMENT FOR MAINTENANCE & SUPPORT OF AMARCON SOFTWARE PRODUCTS**

### **The undersigned:**

Amarcon BV, hereinafter referred to as "Amarcon", registered in Zwolle (The Netherlands) under registration number 05077199 with offices at Korenstraat 37, 7722 RS Dalfsen, The Netherlands, represented by general director dr. ir. L.J.M. Adegeest,

### **And Customer agree to the following:**

1. This agreement is subjected to the "Maintenance and Support Conditions for Amarcon Software Products" included in Appendix A.
2. The use of Amarcon Software Products is subject to the "International License Agreement for Amarcon Software Products" between Amarcon and Customer.
3. This agreement concerns all licensed modules of the OCTOPUS software.
4. "This Agreement is effective from the date of execution of the Agreement. Service Agreement fee is due at the start of each year."

Dalfsen, April 15, 2010



L.J.M. Adegeest  
Amarcon B.V.

## **APPENDIX A: Maintenance and Support Conditions for Amarcon Software Products**

### **1. DEFINITIONS**

Following terms are defined as follows for the purposes of this Agreement:

- 1.1. **"Software"** concerns any software supplied to Customer by Amarcon referring to and provided with this Agreement, including all related documentation and all related updates supplied to the Customer by or on behalf of Amarcon, including but not limited to all licensed modules of software referring to this Agreement. Any modification the Customer makes to the Software becomes part of that Software.
- 1.2. **"Documentation"** is the description of the functionality and features of the "Software" as supplied with the "Software" to the end-user by Amarcon.
- 1.3. **"Use"** shall be the copying of any portion of the Software from storage units or media into equipment for processing.
- 1.4. **"Content"** shall be the material comprised in and/or made available via Amarcon including, but not limited to, photographs, graphics, images, captions attached to any photographs/graphics/images and any other text.
- 1.5. An **"Error"** is non-conformity of the "Software" according to the specifications explicitly given in the "Documentation".
- 1.6. **"Agreement"** is this Agreement for Maintenance and Support of Amarcon Software Products.

### **2. SPECIFICATION OF MAINTENANCE AND SUPPORT**

2.1. Maintenance and support are available for the current version of the Software and the immediate preceding version. This Agreement focuses on explanations of intended feature usage and covers:

- Free fixes of Errors;
- Interim patches and workarounds of Errors, which allow the end-user to continue the use of the software;
- Free updates of the Software which according to Amarcon are an improvement of the version in use by the end-user, and with a by Amarcon determined periodicity.
- Modification of the manuals and/or help-function of the Software to comply with software changes.
- Technical assistance by telephone or e-mail on the installation and use of the Software during Amarcon's regular office hours.

2.2. Maintenance work will be carried out by Amarcon at best effort, if:

- The Error is repeatable;
- The Error occurs in a version which is supported by Amarcon at that moment;
- The End-user provides Amarcon, within reasonable limits, with all the necessary assistance and information to solve the problem;
- The Error was not caused by un-professional or unauthorized use of the software by the end-user or others;
- The Error is reported to Amarcon in writing (can be e-mail also).

2.3. The following is not covered by this Agreement:

- Recovery of files in use by the End-user;
- Improvements or modifications of the Software, other than Errors;
- Modeling and checking input data, created by the end-user;
- Interpreting confusing calculation results;
- System administration, e.g. installing operating system patches, configuring networks, etc.
- Interface customization, e.g., creating dialog boxes, menus or command files.
- Functional upgrades of the software, e.g. new calculation methods, new import or export modules, new post-processing functionality, etc.

2.4. The Use and ownership of new releases, versions, workarounds or patches are subject to the same License Agreement as the original Software.

### **3. DURATION AND TERMINATION**

3.1. This Agreement has a fixed duration of one year. The Agreement is effective from the date of execution of the Agreement and is renewed automatically each contract year.

3.2. Both parties can stop the Agreement by a notification in writing at least two months before the end of each contract year.

3.3. In the event Customer neglects or fails to perform or observe any of its obligations under this Agreement, or if any assignment shall be made of its business for the benefit of creditors, or if a receiver, trustee in bankruptcy or a similar officer shall be appointed to take charge of all or part of its property, or if it is adjudged a bankrupt, this Service Agreement shall terminate immediately and automatically.

#### **4. FEE**

- 4.1. For more information about maintenance and support fees, we refer to our quotation.
- 4.2. The fee shall be paid by the Customer annually in one term and in advance.
- 4.3. Amarcon preserves the right to change the fee, by changing the percentage and/or list-price of the Software in service. The Customer will be notified of fee changes in writing at least six weeks in advance.
- 4.4. All activities carried out by Amarcon and which are not covered by this Agreement will be invoiced according to Amarcon's regular rates.

#### **5. DISCLAIMER OF WARRANTIES**

- 5.1. While every effort is made to ensure the availability and accuracy of the Content, Amarcon does not warrant the availability of the Content or that the Content will be error free, unless agreed otherwise in a separate and signed agreement, explicitly stating the availability and quality guarantees given.
- 5.2. Amarcon accepts no responsibility for any Use made of the Software or any of the Content and shall not be liable for any loss suffered, to the fullest extent that Amarcon may exclude or limit such liability by law.
- 5.3. These limitations or exclusions of warranties and liabilities do not affect or prejudice the statutory rights of a client.

#### **6. LIMITATION OF LIABILITY**

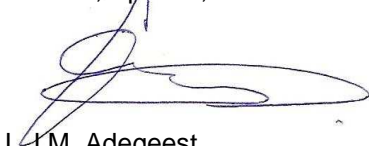
- 6.1 Customer agrees that neither Amarcon nor its suppliers will be liable for any indirect, special, incidental or consequential damages caused by loss of business, loss of profits (whether direct or indirect), loss of anticipated savings or the like, whether arising in contract tort (including negligence), product liability or otherwise, arising out of or in connection with this Agreement and/or the Content, even if Amarcon or its representatives have been advised of the possibility of such damages, or for any claim or demand against the Customer by any other party.
- 6.2 Limitations and exclusions of warranties and liabilities set out in Clause 5 above and this Clause 6 are fundamental elements of the basis of the agreement between Amarcon and Customer. You agree that Amarcon would not be able to provide maintenance and support on an economic basis without such limitations and exclusions.

#### **7. GENERAL**

- 7.1 If any part of this Agreement is found by any court of competent authority to be invalid, unlawful or unenforceable in any jurisdiction, then that part shall be deemed not to be a part of this Agreement, it shall not effect the enforceability of the remainder of this Agreement, nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.
- 7.2 Without prejudice to Amarcon's right to enforce its Intellectual Property Rights in any jurisdiction where it has grounds for believing that infringement of such rights is taking place, each party hereby irrevocably agrees that this Agreement and any disputes that may arise in connection with it shall be governed in all respects by Dutch law and shall be subject to the jurisdiction of the Dutch courts.
- 7.3 This Agreement contains the understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. Only a dedicated written contract between Amarcon and Customer, when fully signed, will supersede this agreement at all times.  
Each party acknowledges that it has not entered into this Agreement in reliance in whole or in part on any representation or warranty made by or on behalf of any other party (other than expressly set out in this Agreement).

All questions concerning this Agreement shall be directed to Amarcon ([info@amarcon.com](mailto:info@amarcon.com)).

Dalfsen, April 15, 2010



L.J.M. Adegeest  
Amarcon B.V.