



**PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND LICENSOR. BY CLICKING THE "I ACCEPT" BUTTON, YOU ACKNOWLEDGE AND REPRESENT THAT YOU ACCEPT AND AGREE TO ALL OF THE TERMS OF THIS MAINTENANCE AND SUPPORT AGREEMENT; THAT YOU ARE AUTHORIZED TO ACCEPT IT; AND THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, THEN DO NOT CLICK THE "I ACCEPT" BUTTON.**

**PLEASE NOTE: THE TERMS CONTAINED HEREIN MAY HAVE CHANGED.**

### **MAINTENANCE AND SUPPORT AGREEMENT**

This Maintenance and Support Agreement ("Agreement") shall govern the services to be provided by Advance Fiber Optics, Inc. ("Licensor"), a corporation organized under the laws of the State of Utah, United States of America, with its principal place of business at 871 West Robinson Drive, North Salt Lake, Utah, 84054, with respect to the Covered Software set forth in the Order for Services submitted by the undersigned or person/entity accepting these terms and conditions of this Agreement ("Licensee") and shall be effective upon Lessee's payment of the applicable Annual Maintenance Charge and confirmation by Licensor (the "Effective Date").

1. **Definitions:**

- 1.1. "Covered Software" means the Software titles and numbers of licenses/users set forth on the Order for Services.
- 1.2. "Documentation" means a written guide in any form or media describing the use and operation of Software, together with any related supporting documentation.
- 1.3. "Lapse" means an interruption in the continuous Maintenance and Support Services coverage (or allowing an agreement for Maintenance and Support Services to expire without renewing).
- 1.4. "Order for Services" means the form, telephonic or online request completed by or on behalf of Licensee that sets forth the Covered Software including Software titles, number of users, and the annual maintenance plan and it's a prerequisite for entering into this Agreement.
- 1.5. "Software" means the proprietary computer software offered by Licensor in machine-readable form and shall include the original and all whole or partial copies and the following material: 1) machine-readable instructions and data, 2) components and releases, 3) audio-visual content (such as images, text, recordings, or pictures), 4) related software materials, and 5) Software use documents or keys, and Documentation.
- 1.6. "Special Services" means services not within the scope of this Agreement, but that may be performed by Licensor for additional charge.
- 1.7. "Supported Version" means the current version of the Software and such prior versions for which Licensor is providing support services.
- 1.8. "Term" means the term set forth in Section 4 below.

2. **Services:** Provided Licensee pays the Annual Maintenance Charge and an End User License Agreement is in effect for a Supported Version of the Covered Software, Licensor will provide the following Maintenance and Support Services during the applicable Term:

2.1. **Technical Support Services**

- 2.1.1. All fixes and patches ("Updates") applicable to the Covered Software and distributed by Licensor via the website at [http://www.ospinsight.com/products/demo\\_download.html](http://www.ospinsight.com/products/demo_download.html).
- 2.1.2. Reasonable access by telephone and/or Internet (Monday through Friday, 8:00 a.m. to 5:30 p.m. MST. UTC/GMT -7 hours) to Licensor's technical staff for support in the use and operation of the Covered Software.
- 2.1.3. Technical Support Services pertain to software bugs or specific problems that relate to how the Covered Software operates and is intended to provide limited aid in the use of the Covered Software. It is not intended to be used for training on the Software.
- 2.1.4. This service is for the Covered Software and any features of associated third-party applications that are directly related to the Covered Software and provided by Licensor only. Other third-party

features and/or applications are outside the scope of this Agreement and are not supported. Licensee should refer to the provider or developer of such third-party features and/or applications.

## 2.2. Upgrade Maintenance Service

- 2.2.1. All new versions of a prior Covered Software containing additional and/or improved functionality as it pertains to each Covered Software individually, not collectively, among the various Software made available by Licensor ("Upgrades"). All Upgrades, updates, fixes, workarounds and modifications of Covered Software shall be deemed to be part of such Covered Software subject in all respects to the terms of this Agreement, and shall be owned in all respects and exclusively by Licensor. To the extent Licensee or its personnel or any affiliate thereof may acquire any right or interest therein by operation of law, or otherwise, Licensee hereby irrevocably assigns all such right, title and interest exclusively to Licensor.
- 2.2.2. Notification of Upgrades by Licensor to Licensee within a reasonable time from the time Upgrades are completed and made available to end users. Upgrades will be made available via download by the end user from the applicable download site.
- 2.2.3. No obligation is made or implied herein by Licensor to develop and distribute Upgrades within any defined period of time; Licensor, will, however, make available to current subscribers to a technical support and maintenance agreement such Upgrades as are developed from time to time and made available to end users by Licensor.
- 2.2.4. Licensor reserves the right to require payment of an additional fee if substantial additional functions or improved performance is provide with respect to Covered Software.

## 2.3. Maintenance Services Exclusions. In accordance with the applicable End User License Agreement and unless otherwise agreed to in writing by Licensor, the Maintenance and Support Services and the charges associates therewith do not cover or including the following:

- 2.3.1. Support of Software which has been modified or required other than by Licensor or by a third party engaged by Licensor;
- 2.3.2. Making specification changes or performing services connected with the relocation of Software;
- 2.3.3. Modification or replacement of Software, repair of damage, or increase in service timer caused by failure to continually provide a suitable operational environment with all facilities prescribed by the applicable Documentation, including, but not limited to, the failure to provide or the failure of adequate electrical power, temperature or humidity control, or computing environment;
- 2.3.4. Modification or replacement of Software, repair of damage, or increase in services time caused by the use of the Software for other than the purposes for which it is authorized or not in accordance with the Software operating guidelines;
- 2.3.5. Modification or replacement of Software, repair of damage, or increase in service time caused by: accident, natural or man-made disaster which shall include but not be limited to fire, water, wind, and lightening, transportation, neglect or misuse.
- 2.3.6. Maintenance or replacement of Software, or increase in services time caused by the use of the Software in combination with other products;
- 2.3.7. Backing up or restoring programs and/or data;
- 2.3.8. Keying, importing, converting or manipulation of data;
- 2.3.9. On-site or formal classroom training on the operation and use of the Software;
- 2.3.10. Initial installation of the Software and any subsequent releases; or
- 2.3.11. Use of the Software other than in accordance with system requirements; or
- 2.3.12. Support of Software which is not Covered Software.
- 2.3.13. In the sole discretion of Licensor, Licensor may perform any of the foregoing services on a separate billable Special Service basis or as part of a separate agreement. Licensee agrees that any services rendered pursuant to Licensee's request of services which is determined by Licensor to have been caused by problem set forth in the exclusions above shall be a Special Service.

## 2.4. Licensor reserves the right to change or modify the Maintenance and Support Services at any time and from time to time upon 30 days written notice to Licensee or posting of notice at Licensor's website. In the event

of a conflict between this Agreement and the End User License Agreement concerning which Services apply and how such Services will be provided the End User License Agreement shall control.

3. **Annual Maintenance Charge:** Licensee shall pay to Licensor the Annual Maintenance Charge in effect as of the Effective Date or as of the commencement of any Renewal Period.
  - 3.1. The Annual Maintenance Charge shall be adjusted to account for any additional licenses that Licensee may purchase in accordance with Licensor's fees in effect at such time.
  - 3.2. Licensor may for an additional cost provide software maintenance management services for third-party products that are either embedded within Covered Software or are used as optional add-ins. These products are outside the pricing control of Licensor and ongoing maintenance and technical support fees for third party products are not covered by this Agreement.
  - 3.3. All Annual Maintenance Charges are due and payable upon Licensee's acceptance of this Agreement as set forth in Section below and within thirty (30) days of the invoice date for any Renewal Period(s) or any Special Services. In the event Licensee fails to make payment to Licensor when due, Licensor reserves the right to cancel any Maintenance and Support Services without further notice to Licensee. Upon cancellation of the Maintenance and Support Services, Licensee shall have no further right to receive any Maintenance and Support Services. Notwithstanding the foregoing, Licensor hereby agrees to facilitate the prompt transfer of any and all proprietary data and/or applications embedded within Covered Software to Licensee upon termination.
  - 3.4. Payments provided for in this Agreement shall, when overdue, be subject to a late payment charge calculated at a rate of one and one-half percent (1.5%) per month until paid; provided, however, that if the amount of such late payment charge exceeds the maximum permitted by law for such charge, such charge shall be reduced to such maximum amount. Licensee shall be liable for all costs of collection incurred by Licensor including without limitation collection agency fees, reasonable attorney's fees and court cost if Licensee fails to comply with the payment obligations set forth herein.
4. **Term:** This Agreement shall commence on the Effective Date and shall remain in effect through the last day of the same calendar month in the following calendar year (the "Initial Term"). Licensee may renew this Agreement for an additional period (a "Renewal Period") provided that Licensee is bound by an effective End User License Agreement for use of the Software. The Initial Term and any Renewal Period(s) are collectively referred to herein as the "Term". Licensee's renewal of this Agreement shall be subject to payment of the Annual Maintenance Charge which may be adjusted in accordance with Licensor's then-current prices, any may include additional charges associated with reinstatement due to any Lapse.
5. **License:** All Services provided to Licensee hereunder shall be deemed to be a part of the Licensed Product, and all terms and conditions of the License Agreement not inconsistent with the express provisions of this Agreement shall be applicable to such Services, including without limitation those relating to use, copying, return of materials, assignments, ownership, copyright, trade secret and patent protection and applicable law.
6. **Agreement and Acceptance.**
  - 6.1. Licensee's placement of an Order for Services and payment of the Annual Maintenance Charge constitutes acceptance of this Agreement. This Agreement is not effective until it has been confirmed by Licensor. Maintenance and Support for the Covered Software may be subject to different terms and conditions.
  - 6.2. UPON RECEIPT OF ORDER CONFIRMATION FROM LICENSOR VIA EMAIL OR INVOICE, OR, BY CHECKING THE "I AGREE" BOX, LICENSEE HEREBY ACKNOWLEDGES THAT (1) IT HAS READ AND UNDERSTANDS THIS AGREEMENT; (2) IT IS AUTHORIZED TO ACCEPT THIS AGREEMENT; AND (3) IT AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.
  - 6.3. **FOR ON LINE TRANSACTIONS ONLY: IF LICENSEE DOES NOT ACCEPT THE TERMS AND CONDITIONS CONTAINED HEREIN, DO NOT CHECK THE "I AGREE" BOX AND THIS AGREEMENT WILL NOT TAKE EFFECT.**
  - 6.4. **FOR OFFLINE TRANSACTIONS ONLY: AFTER PLACEMENT OF AN OFFLINE ORDER FOR SERVICES, LICENSEE MAY CANCEL THIS AGREEMENT BY SENDING A WRITTEN NOTICE OF CANCELLATION TO LICENSOR WHICH MUST BE RECEIVED BY LICENSOR WITHIN TEN (10) CALENDAR DAYS OF THE DATE OF THE ORDER FOR SERVICES FOR SUCH CANCELLATION TO TAKE EFFECT; PROVIDED, HOWEVER, THAT LICENSEE**

**MAY NOT CANCEL THIS AGREEMENT IF IT HAS ALREADY REQUESTED AND RECEIVED MAINTENANCE AND SUPPORT SERVICES FROM LICENSOR.**

**7. Limited Warranty**

Licensor warrants that the media on which the Software is furnished will be free from defects in materials and workmanship under normal use for a period of thirty (30) days from the date of delivery ("Warranty Period"). Licensor does not warrant that the functions contained in the Licensed Product will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error-free. The Licensed Product is furnished "AS IS" and without warranty as to the performance or results and performance of the Licensed Product is assumed by you. Any other software and any hardware furnished with or accompanying the Software is not warranted by Licensor. Licensee's exclusive remedy under this limited warranty is the replacement of any defective physical media on which the Software is furnished, as provided below. To receive a replacement for defective media under this limited warranty, return the defective media to Supplier during the Warranty Period, with proof of payment.

EXCEPT AS PROVIDED ABOVE, THE LICENSED PRODUCT IS PROVIDED ON AN "AS IS" BASIS WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, AND LICENSOR HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS, REPRESENTATIONS AND TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SECURITY, NON-INFRINGEMENT, TITLE, INTEGRATION, QUIET ENJOYMENT, AND THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE LICENSED PRODUCT IS WITH LICENSEE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR, ITS AFFILIATES, DISTRIBUTORS, BUSINESS PARTNERS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN. LICENSEE ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY SUCH WARRANTIES. LICENSOR DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULT THAT LICENSEE MAY OBTAIN BY USING THE SOFTWARE NOR DOES IT WARRANT THAT THE SOFTWARE WILL FUNCTION WITHOUT INTERRUPTION OR THAT IT WILL BE ERROR-FREE. The provisions of Sections 7 and 8 shall survive the termination of this License Agreement, howsoever caused, but this will not imply or create any continued right to use the License Product after termination or expiration of this License Agreement.

**8. Limitation of Liability**

Licensor's sole obligation or liability under this Agreement is the replacement of defective media according to the limited warranty above. IN NO EVENT WILL LICENSOR, ITS AFFILIATES, PRODUCT DEVELOPERS OR SUPPLIERS BE LIABLE FOR ANY LOSS, DAMAGES, CLAIMS, OBLIGATIONS OR COSTS WHATSOEVER, INCLUDING WITHOUT LIMITATION, SPECIAL, EXEMPLARY, COVER, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF DATA, LOST PROFITS OR LOST SAVINGS, DAMAGES RESULTING FROM BUSINESS INTERRUPTION, PERSONAL INJURY OR FAILURE TO MEET ANY DUTY OF CARE, OR CLAIMS BY A THIRD PARTY, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION (OR ANY HARDWARE FURNISHED WITH THE SOFTWARE), EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY SUCH DAMAGES, OBLIGATIONS OR LIABILITIES (WHETHER IN TORT, CONTRACT, WARRANTY OR OTHERWISE AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE, PRODUCT LIABILITY, OR STRICT LIABILITY). The Limited Warranty and Limitation of Liability set forth in Sections 7 and 8 are fundamental elements of the basis of the agreement between Licensor and Licensee. Licensor would not be able to provide the Software on an economic basis without such limitations.

9. **Restricted Rights Legend:** The Software and Documentation are provided with “RESTRICTED RIGHTS” applicable to private and public licenses alike. Without limiting the foregoing, the Software and Documentation are “Commercial Items,” as that term is defined at 48 C.F.R. §2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation,” as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable, and any successor regulations. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. . Unpublished-rights reserved under the copyright laws of the United States. Manufacturer: Advance Fiber Optics, Inc., 871 West Robinson Drive, North Salt Lake, Utah 84054.
10. **Confidential Information.** Licensee hereby acknowledges and agrees that this Agreement and any and all information and Documentation received in connection with Licensor’s furnishing the Maintenance and Support Services, including Special Services, shall in all respects be governed by and subject to the confidentiality provisions of the End User License Agreement.
11. **Force Majeure:** Licensor shall not be liable to Licensee for any failure or delay caused by events beyond Licensor’s reasonable control, including, without limitation, Licensee’s failure to furnish necessary information; sabotage; failure or delays in transportation or communication; failures or substitutions of equipment; labor disputes; accidents; shortages of labor, fuel, raw materials or equipment; or technical failures.
12. **Non-Assignment:** Licensee shall not assign this without written permission from Licensor, which may be withheld in Licensor’s sole and absolute discretion. Any permitted successor must agree in writing to be bound by this Agreement. Licensor shall have the right to assign this Agreement, in whole or in part, and/or to subcontract its performance obligations hereunder, at any time and from time-to-time in its sole and absolute discretion.
13. **Entire Agreement:** This Agreement, together with the License Agreement and any and all exhibits, schedules and appendices attached hereto and thereto, is the complete, entire and exclusive statement of the agreement between Licensee and Licensor, and supersedes any prior or contemporaneous oral or written communications, proposals, agreements and representations with respect to its subject matter; and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or similar communications between the parties relating in any way to the subject matter of this License Agreement. This License Agreement may not be amended or modified except by a written agreement signed by authorized representatives of each party.
14. **Governing Law:** This License Agreement shall in all respects be governed by and interpreted under the laws of the Commonwealth of Kentucky, United States of America, without regard to conflicts of law provisions. Licensee hereby unconditionally submits and consents to the sole and exclusive jurisdiction and venue of the state and federal courts located in Fayette County, Kentucky, United States to resolve any disputes arising under or in any way related to this License Agreement and waives any objection to the jurisdiction or venue of such courts or Kentucky law governing this License Agreement. No lawsuit, proceeding or any other action relating to or arising under this license agreement may be commenced or prosecuted in any other forum. THIS LICENSE AGREEMENT WILL NOT BE GOVERNED BY OR OTHERWISE CONSTRUED AND ENFORCED BY OR UNDER THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS, INCLUDING WITHOUT LIMITATION ITS CONFLICT OF LAWS RULES, THE APPLICATION OF WHICH IS HEREBY EXPRESSLY EXCLUDED. **The parties hereto waive any right they have or may have to a trial by jury with regard to any matter related to this Agreement.**
15. **Notices:** Any notice required under this Agreement shall be given in writing and delivered personally or by telecopy (with transmission confirmed), registered or certified mail, return receipt requested, or overnight courier to the parties at their addresses noted above or such other addresses as shall have been designated to each other in writing. All notices to Licensor shall be directed to the attention of Customer Service Manager.
16. **Severability:** If any provision of this License Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to

the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

17. **Enforcement:** The failure of either party in any one or more instances to insist upon strict performance of any of the terms or provisions of this Agreement shall not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or provisions on any future occasion. The headings are for convenience only and do not affect the meaning of this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this agreement as of the 20<sup>th</sup> day of MARCH, 2018

**Agreed to:**

**LICENSEE:**

Lexington-Fayette Urban County Government

By:   
Authorized Signature

Name: Jim Gray  
Date: 22-Mar-2018

Address:  
\_\_\_\_\_  
\_\_\_\_\_

**Agreed to:**

**LICENSOR:**

ADVANCE FIBER OPTICS, INC.

By:   
Authorized Signature

Name: Clark Stevenson  
Date: 3/20/2018

Address:  
871 W. Robinson Drive  
North Salt Lake, UT 84054  
Attention: Clark Stevenson

**EXHIBIT A – AFO LICENSED PRODUCT DESCRIPTION AND SERIAL NUMBER IDENTIFICATION**

The Licensed Product referred to in the Maintenance and Support Agreement consists of computer software programs and related documentation created and/or developed by AFO (Advance Fiber Optics, Inc.) as listed below and identified by specific license number(s):

Licensed Product Description	Serial Number
OSPInSight® Edit for ESRI	EM800-1177 License ID: 63491254 Activation Password: 3ZD3CU49
OSPInSight® SpliceGUI	SPLGUIEM800-1177 License ID: 63491255 Activation Password: 945J929Q
Effective Through February 22, 2020	

\*Third party product and subject to additional service fees as defined in Section 2.2