

ParaView Maintenance and Support Services Terms and Conditions

Any purchase of ParaView Maintenance and Support Services from Kitware, Inc. (“Kitware”) by any individual or entity (“Customer”) is subject to the terms and conditions described herein, as updated from time to time (“Terms and Conditions”). The accompanying Order Confirmation Form and these Terms and Conditions (collectively, this "Agreement") comprise the entire agreement between the parties with respect to these maintenance services, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and Conditions and the Order Confirmation, these Terms and Conditions shall govern, unless the Order Confirmation expressly states that the terms and conditions of the Order Confirmation shall control. Kitware and Customer may be referred to herein collectively as the “Parties” or individually as a “Party.”

This Agreement prevails over any Customer terms and conditions regardless of whether or when Customer submitted their request for proposal, order, or such terms. Provision of Services to Customer does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend this Agreement.

1. Software License. Customer agrees that its use of ParaView software is subject to the ParaView Open Source Software License Agreement which can be found at <https://www.paraview.org/license/>.
2. Services. Subject to the terms and conditions of this Agreement, and conditioned on Customer’s compliance therewith, during the Term, Kitware will provide to Customer maintenance and support services at such Support Tier as the Customer purchased and in accordance with Kitware’s description in this Agreement and the Order Confirmation Form (the “Services”).
3. Issue Reporters. Customer must designate at least 1 employee to report issues (“Issue Reporter(s)”). Only Issue Reporters may report Issues. Each Issue Reporter will be provided an account on the Issue Tracker for the purpose of reporting Issues. The maximum number of Issue Reporters for each Support Tier is as follows:
 - a. Basic Package: One (1).
 - b. Enhanced Package: Five (5).
4. Issue Reporting. All Issues must be reported by an Issue Reporter through the ParaView Issue Tracker. The Issue Reporter will provide sufficient details and all necessary input data and parameters for Kitware to reproduce the Issue. Issues may be reported only on the Current Release of ParaView..
5. Issue Response Time and Follow-up Communication Time. Kitware will respond to an Issue reported in the ParaView Issue Tracker by an Issue Reporter within a time frame determined by the purchased Support Tier. The response will indicate that Kitware was able to reproduce the issue or Kitware requires further information.
 - a. Basic Package: Kitware will respond to the initial Issue report within 5 business days.
 - b. Enhanced Package: Kitware will respond to the initial Issue report within 2 business days.
6. Issue Resolution Time. Kitware will use commercially reasonable efforts to Resolve Issues reported to Kitware by Customer within a time frame determined by the purchased Support Tier. If the Issue resolution involves an update to the ParaView source code or documentation, Kitware guarantees only that the update will be made available in ParaView’s GitLab source code repository at <https://gitlab.kitware.com/paraview/paraview> in the branch for the Current Release and the development branch. If the Issue resolution involves an update to the ParaView source

code, the ParaView binaries that include the update will be made available to Customer at <https://www.paraview.org/download/>.

- a. Basic Package: For a reproducible Issue, Kitware will Resolve the Issue within 4 weeks after the issue is reproduced by Kitware.
 - b. Enhanced Package: For a reproducible Issue, Kitware will Resolve the Issue within 2 weeks after the issue is reproduced by Kitware.
7. Support Meetings. The maximum number and frequency of regularly scheduled support meetings are dependent upon the purchased Support Tier. Each support meeting will be up to a maximum of 30 minutes in duration and will be scheduled at mutually agreeable recurring times. This meeting time can be rescheduled if both parties agree to a new time. During support meetings, Customer may demonstrate/report issues or ask general ParaView usage questions.
 - a. Basic Package: Support meetings may be scheduled monthly, with no more than 12 meetings during the Term of this agreement. Deviations from the monthly schedule may occur upon agreement of both parties. One Kitware Paraview Developer will be in attendance at the meetings.
 - b. Enhanced Package: Support meetings may be scheduled weekly, with no more than 52 meetings during the Term of this agreement. Within the first two weeks of the Term Kitware will identify one Kitware Paraview Developer to serve as Kitware's point of contact for technical matters ("Technical Point of Contact"). When available, the Technical Point of Contact will be the Kitware ParaView Developer present in the support meeting. If the Technical Point of Contact is not available, another Kitware ParaView Developer will attend that support meeting instead. While Kitware will make reasonable effort to keep the same Technical Point of Contact assigned to Customer throughout the term of the Agreement, it may become necessary to make a change to the assignment. Customer will be notified of any change to the Technical Point of Contact.
8. Exceptions. Kitware has no obligation to provide Services relating to Issues that, in whole or in part, arise out of or result from any of the following:
 - a. An unsupported file format, as identified in the ParaView Maintenance Covered File Formats document available at <https://www.kitware.com/terms/PVCoveredFileFormats.pdf> ("Covered Files Document"). Kitware's sole obligation for file formats marked as "minimal" support or not listed in the document is to update the ParaView Documentation to accurately reflect limitations in the functionality related to that file format. Kitware reserves the right, at its sole discretion, to modify the Covered Files Document at any time.
 - b. Python Scripting. Kitware will support only Issues with the ParaView API that can be demonstrated on a standard sample dataset within a few lines of Python script. Kitware will not resolve Issues in Customer's Python scripts.
 - c. Issues that cannot be reproduced by Kitware.
 - d. Issues that are not present in the Current Release of ParaView.
9. Term and Termination. This Agreement shall remain in effect for the term set forth on the Order Confirmation Form or until terminated as set forth herein (the "**Term**").
 - a. Kitware may terminate this Agreement, effective upon written notice to Customer, if Customer breaches this Agreement and such breach: remains uncured for twenty (20) days after Kitware provides written notice thereof.
 - b. Customer may terminate this Agreement, effective upon receipt of written notice to Kitware, if Customer is dissatisfied with the Services. Customer will receive a pro-rata refund of any pre-paid amounts for the portion of the Term not completed.
 - c. No expiration or termination shall affect Customer's obligation to pay all Fees that may have become due before such expiration or termination of Agreement, or entitle Customer to any refund, in each case except as set forth herein.
10. Limited Warranty. Subject to the Limitation of Liability, Kitware warrants to Customer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in

accordance with commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. KITWARE MAKES NO WARRANTY AS TO RESULTS TO BE ATTAINED. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH HEREIN, KITWARE MAKES NO WARRANTY WHATSOEVER REGARDING THE SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; [(b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

11. Limitation of Liability. IN NO EVENT SHALL KITWARE BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT KITWARE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN NO EVENT SHALL KITWARE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT (INCLUDING BREACH OF WARRANTY), TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO KITWARE FOR THE CORRESPONDING SERVICES SOLD HEREUNDER OR \$10,000, WHICHEVER IS LESS.
12. Payment Terms. The payment schedule shall be set forth in the Order Confirmation Form. All payments hereunder shall be in US dollars and must be paid pursuant to the terms of the Order Confirmation Form. Services will not commence until all upfront payments due have been received by Kitware. Payments that are more than 10 days late will incur a 1.5% monthly penalty. Customer shall also reimburse Kitware for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Customer shall not withhold payment of any amounts due and payable under this Agreement by reason of any set-off of any claim or dispute with Kitware.
13. Miscellaneous.
 - a. All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in County of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding.
 - b. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to Service Provider hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, or other Potential disasters such as epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; and [(g) strikes, labor stoppages or slowdowns or other industrial disturbances; and [(h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party.
 - c. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the

recipient; or (iv) on the [third] day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order Confirmation Form.

- d. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Kitware's prior written consent, which consent Kitware may give or withhold in its sole discretion.
- e. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof.
- f. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- g. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Confirmation Order Form referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.
- h. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

14. Definitions.

- a. **Current Release** means the most recent release of ParaView, excluding nightly releases, which can be found on <https://www.paraview.org/download/>.
- b. **Documentation** means the ParaView User Guide (available at <https://docs.paraview.org/en/latest/>) combined with the in-code source documentation available through doxygen applicable to the particular supported version of ParaView (doxygen documentation can be accessed at <https://www.paraview.org/paraview-docs>)
- c. **Issue** means a reproducible failure of the Software to perform in substantial conformity with the specifications set forth in the Documentation, whose origin can be isolated to a single cause.
- d. **Issue Tracker** means the online ticketing system designated by Kitware to enter and track issues.
- e. **Kitware Paraview Developer** means a Kitware employee who contributes to the development of ParaView.
- f. **Order Confirmation Form** means the order confirmation form signed by or on behalf of Customer for Customer's purchase of the Services under this Agreement.
- g. **Resolve** means the provision of: (a) Services that, in Kitware's sole discretion, correct the Issue; (b) information to Customer that corrects the Issue or provides a suitable workaround; (c) information to Customer on how to obtain a software solution that corrects the Issue; (d) notice to Customer that the Issue is caused by a known, unresolved issue or an incompatibility issue with the Software; (e) information to Customer that identifies the Issue as being corrected by upgrading to a newer release of the Software; or (f) notice to Customer that the Issue has been identified as arising out of or resulting from a Service Exception.
- h. **Support Tier** means the tier of support and maintenance purchased by the Customer as set forth in the Order Confirmation Form. The tier options are the Basic Package and the Enhanced Package.