



SOFTWARE MAINTENANCE AND TECHNICAL SUPPORT AGREEMENT

This Software Maintenance and Technical Support Agreement (hereinafter the "Support Agreement") is entered into on this _____, by and between Maintenance Connection, Inc., a California corporation, having its principal place of business at 1477 Drew Ave., Suite 103, Davis, California 95616 hereinafter ("Maintenance Connection"), and _____, of _____, (hereinafter "Customer").

1. DEFINITIONS

The following terms and expressions shall have the following meanings when used in this agreement:

"Business Hours", shall mean Monday to Friday, excluding registered US holidays, from 6:00am to 4:00pm PST.

"Enhancements" shall mean incremental upgrades or new releases of the Software, generally containing error corrections, enhanced system functions, and new system features."

"Number of Users" shall mean the number of users specified in the Quotation who are authorized to use the Software.

"Order" shall mean any purchase order issued by the Customer made pursuant to this Agreement for software and/or services from Vendor.

"Quotation" shall mean a final price quotation for the supply of Software or Services issued by Vendor and signed by Customer.

"Services" shall mean the Services set out in this Software Maintenance and Technical Support Agreement.

"Site" shall mean the location for which the Software may be used identified in the Quotation/Order.

"Software" shall mean each Vendor software program provided by Vendor, including software in which Vendor has sub-licensing rights, in executable, machine readable, object, printed or interpreted form, any documentation, modifications, improvements or updates supplied to the Customer under any Quotation or Order.

"Software License" shall mean the Software License supplied separately by Vendor.

"Vendor" shall mean Maintenance Connection, Inc., of 1477 Drew Ave., Suite 103, Davis, CA 95616.

2. TERM

2.1 **Term/Annual Renewal.** This Support Agreement shall be effective on the date an Order for the first year of use under the Software License Agreement is submitted at the cost provided for in the Quotation. This Support Agreement shall expire upon the anniversary date of the Software License Agreement, unless renewed by Customer pursuant to this paragraph. Vendor will notify Customer in writing within thirty (30) days of a pending expiration date. Customer may, at its sole discretion, enter into one or more additional one-year terms of service under the Support Agreement by placing a purchase order with Vendor prior to the expiration date of the Support Agreement. The Customer will be invoiced for an additional annual term immediately upon the submission of the required purchase order.

3. FEES & OPTIONS

3.1 **Annual Hosting Fee.** The annual hosting fee (if applicable) includes database backups, redundant RAID disk storage, load balanced web servers and use of the Microsoft SQL Server 2000 or higher database server on Maintenance Connection's Cloud Servers.

3.2 **Annual Support Fee.** The Support Fee will be billed according to the cost provided in the Quotation on an annual basis.

3.3 **Additional Fees.** Occasionally additional services will be required that are not covered in the scope of this agreement. The rates for these services are as follows:

3.3.1 **On-site services.** Onsite service will be billable in 4-hour minimum increments, at a rate of \$200.00 per hour. Travel and any accommodation expenses for additional services that are not covered by the terms of this Agreement will be arranged and paid for by Customer.

3.4.2 **Distance support.** Phone support for additional services beyond the scope of this agreement will be billable at \$200.00 per hour, in ten-minute minimum increments. E-mail inquiries and responses thereto shall be free-of-charge.

4. PAYMENT

4.1 Date of Payment. CUSTOMER will pay the Annual Fees defined in section 3 within forty-five (45) days of receipt of invoice by Customer from Vendor. Failure to pay the Annual Support Fee portion of the invoice may result, at Vendor's discretion, in immediate suspension or termination of this Support Agreement.

5. DESCRIPTION OF SUPPORT AND MAINTENANCE SERVICES

5.1. Customer Support Services

5.1.1. Vendor will provide assistance on the use of the Software by telephone, fax or e-mail, during Business Hours.

5.1.2. Vendor will respond to requests for Software application advice within 1 working day of the initial request.

5.1.3 Vendor shall retain the necessary competence for enabling further development of the Software, maintenance of documentation, and assisting in fault resolution, assistance with upgrade and patching of the software, and for providing training to the Customer. Supplier does not warrant support for any application other than Software.

5.2. Software Maintenance Services

5.2.1. Vendor will provide Software maintenance, limited to the correction of errors in the Software, procedural documents and other basic information, supplied with the Software. The said Software maintenance will be carried out as set out in 5.2.2 and 5.2.4 below.

5.2.2. Vendor will provide the Customer with a list of all significant errors and corrections with each update for the Software covered by this Agreement.

5.2.3. Errors discovered by the Customer will be reported by a designated representative of the Customer through the reporting mechanisms by Vendor and will include all required supplemental documentation.

5.2.4. The Vendor will attempt to resolve the problem either over the phone, via email, or via fax within four hours of the initial request for assistance. In the event that the error renders the Software unusable, the vendor will use all reasonable efforts to respond to the Customer with an action plan to resolve the problem within 1 working day of notification of the problem, when notification is accompanied by a reasonably complete description of the problem

5.3. Service Exclusions

For the avoidance of all doubt, Software Maintenance Services shall not include the diagnosis and rectification of any damage or defect arising out of:

5.3.1. the modification of the Software or its merger (in whole or in part) with any other software;

5.3.2. the failure by the Customer to implement recommendations in respect of the solutions and faults previously advised by Vendor;

5.3.3. any repair, adjustment, alteration or modification of the Software by any person other than Vendor without Vendor's prior written consent;

5.3.4. any breach by the Customer of its obligations under this Agreement or the License;

5.4. Option to Provide Excluded Services. Vendor may, upon request of the Customer, provide support notwithstanding that the need for such support arises from any circumstances described in clause 5.3 above, or that the support requested is not covered by the terms of this Agreement. Vendor shall in such circumstances be entitled to charge for such service at rates detailed in 3.3 or otherwise on a time and materials basis or fixed quote upon mutual agreement of both Vendor and Customer.

5.5. Software Support Services.

Vendor agrees to provide the Customer with the following Software support services with respect to the Software:

5.5.1. Vendor will provide the Customer with all Software and related documentation for all Enhancements completed and implemented during the term of this Support Agreement.

6. WARRANTIES/REMEDIES

6.1. Warranty. Vendor warrants to the Customer that it will perform the Services provided for in this Agreement with reasonable skill and care, and that the Services will not directly cause or create any defect in the Software.

6.2. Notice/Cure. The Customer shall give notice to Vendor as soon as commercially practical of a breach of warranty. Subject to 6.3 hereunder, Vendor shall remedy any breach of the warranty set out in clause 6.1 above, by the provision of Services free of charge.

6.3. Waiver. The above warranty is made in lieu of all other warranties, whether express or implied, including specifically the warranties of merchantability and fitness for a particular purpose. Without limiting the foregoing, Vendor shall not be liable for and shall have no obligation to remedy any defects

or damage arising out of any of the circumstances described in 5.3 herein.

7. TERMINATION

7.1. Anniversary dates. This Agreement may be terminated for any reason on an anniversary date of this Agreement by Vendor or the Customer, by providing the other party with at least 30 days written notice to the other party. In addition, Customer may terminate this Agreement at any time for any reason upon ten (10) days written notice to Vendor.

7.2. Material Breach. Either party may terminate this Agreement if the other party is in material breach of one or more terms and conditions contained herein, and if the party-in-breach fails to cure the breach within a reasonable period of time following notice from the terminating party.

7.3. Termination of Software License. This Agreement shall be terminated with respect to any particular item of Software on the date any such Software License expires or the License is terminated for any reason. However, no termination of this Agreement by either party for any reason can serve to terminate the Software License Agreement.

Customer Data. All data submitted by Customer, whether posted by Customer or by third parties, remains the sole property of Customer. Customer data shall be considered Confidential Information, subject to the terms of this Agreement. Notwithstanding any other provision in this Agreement, Vendor may provide to third parties registration and statistical information such as usage or User traffic patterns in aggregate form, provided that such information does not include Customer or personally identifying information. Maintenance Connection may access Customer's User accounts, including without limitation Customer Data, to respond to service or technical problems.

Customer Data Requests. Customer Data may be requested in a SQL Server .BAK file at any time during the Agreement. Requests for the Customer Data in excess of 1 request per month will be billed at a rate of at \$200 per hour, in ten-minute minimum increments. Upon termination of the Agreement, Customer will receive a copy of their database backup file.

8. SOFTWARE LICENCE

8.1. Effect of Software License. The Customer has been granted a license by Vendor in the terms of a separate Software License to use Software being supported under this Agreement and acknowledges that any replacements, improvements or additions to that Software provided under this Agreement will be subject to the terms and conditions of the License.

8.2. Incorporation of Terms. The terms and conditions of this Support Agreement shall apply to all Software and

Services supplied by Vendor under any Order placed by the Customer. In the event of any conflict between these terms and the provisions of the Software License Agreement, the terms of the Software License Agreement shall apply.

9. MISCELLANEOUS

9.1. Assignment. This Agreement shall not be assigned by either party without the prior written consent of the other party, except as a consequence of a transfer of ownership of all or substantially all of the assets of the party relating to this Agreement.

9.2. Severance. If a provision of this Agreement is wholly or partially invalid, this Agreement shall be interpreted as if the invalid provision had not been included herein.

9.3. Amendments. Any amendment to this Agreement shall only be effective if the amendment is in writing and is signed by authorized representatives of the parties.

9.4. Counterparts. This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and both of which shall constitute one and the same Agreement.

9.5. No Waivers. No failure of delay by a party to this Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, or shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

9.6. Attorney's Fees. In any proceeding brought to enforce the provisions of this Agreement, the losing party therein shall pay to the prevailing party reasonable attorneys' fees, actual court costs and other expenses incurred by the prevailing party in connection with such proceeding.

9.7. Governing Law. This Agreement shall be construed in accordance with the laws of the state of Kentucky (USA). All disputes relating hereto shall be resolved in a court of competent jurisdiction, whether state or federal, in the state of Kentucky (USA).

9.8. Entire Agreement. This Agreement constitutes the complete understanding between the parties of each party's obligations to the other party relating to the Services, and supercedes all other previous written or oral agreements or memoranda.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first written above.

Maintenance Connection, Inc.

Lexington-Fayette Urban County Government



Account Manager

Jim Gray, Mayor

Date: 3/11/16

Date: