

# SOFTWARE MAINTENANCE AGREEMENT

Date: \_\_\_\_\_

B E T W E E N :

\_\_\_\_\_  
Company Name (ALicenser@) - and - \_\_\_\_\_  
Customer Name (ALicensee@)

Company Office Address: \_\_\_\_\_  
Customer Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Agreement Number: \_\_\_\_\_ File/Project Number: \_\_\_\_\_

Service Level: \_\_\_\_\_  
Name of Software: \_\_\_\_\_  
Υ Level I            Υ Level II  
Υ Level III         Υ Level IV

Date of Corresponding Software License Agreement: \_\_\_\_\_

Supply Contract: \_\_\_\_\_

Date of Supply Contract: \_\_\_\_\_

**1. DEFINITIONS.**

The following are definitions of various terms to be used throughout this Agreement.

- (a) **“Authorized Computers”** means the equipment LICENSEE is required to maintain at Authorized Stations upon which the Supported Software are intended to be used, more particularly described in Schedule AA@.
- (b) **“Authorized Stations”** means the location(s) at which the LICENSEE is licensed to use the software and where the Software Maintenance Services may be provided under this agreement, more particularly described in Schedule AA@.
- (c) **“Computer”** shall mean any one or more processing units operating under the control of a single operating system which will process the Software.
- (d) **“Products”** shall mean LICENSER'S proprietary computer Software, third party software and related items that are an integral part of the Products and includes the following or any combination of the following: (i) instructions or statements in Computer readable form, (ii) any database structure in Computer readable form, and (iii) any related materials, including documentation and listing, whether in Computer readable or printed form.
- (e) **“Product Enhancements”** shall mean either corrections, improvements or additions to the Software which increase the basic functions of the Software to a level that redefines the original Products as defined by the LICENSER.
- (f) **“Product Upgrades”** shall mean either corrections, improvements, revisions, new releases, additions or user manuals which relate to operating performance of the Products but which do not redefine the original Products as defined by the LICENSER.
- (g) **“Service Level”** means the specified level of service for the provision by LICENSER of Software Maintenance Services as specified in Schedule AC@.

- (h) **"Software"** means the LICENSER=s proprietary computer data processing program which is an integral part of the Products.
- (i) **"Software Problem(s)"** means Software having defective distribution media and/or Software function which is inconsistent with the user manual(s).
- (j) **"Supply Contract"** means the contract for the supply of the Products assigned to the LICENSEE as specified above.
- (k) **"Support Contact(s)"** means the LICENSEE=s authorized individual(s) with whom LICENSER communicates when providing Software Maintenance Services. The Support Contact(s) shall be knowledgeable about how the Supported Products are being used and the operating environment.
- (l) **"Supported Products"** means the Software that the LICENSER will perform Software Maintenance Services for at the specified Service Level identified in more detail in Schedule AA@ .
- (m) **"Third Party Software"** means the software that is an integral part of the Products but not the LICENSER=s proprietary Software identified in more detail in Schedule AA@.
- (n) **"Third Party Software Problem(s)"** means Third Party Software having defective distribution media and/or Software function which is inconsistent with the user manual(s).

## 2. LICENSE AGREEMENT

All Product Upgrades, Product Enhancements, user manuals (or portions thereof), media, and services provided hereunder are subject to all of the terms and conditions of the LICENSER=s Software License Agreement and shall remain proprietary to the LICENSER and title thereto remains with the LICENSER. All applicable rights to patents, copyrights, trademarks, and trade secrets in the Software and the Product Upgrades and Product Enhancements, are and shall remain with the LICENSER. The LICENSEE shall not sell, transfer, publish, disclose, display or otherwise make available the Software or Product Upgrades or Product Enhancements to others and agrees to secure and protect same.

Provided payment of fees is made, LICENSER grants LICENSEE a non-assignable, non-transferable, non-exclusive license to use the Product Upgrades and Product Enhancements in accordance with the terms and conditions outlined in LICENSER=s Software License Agreement governing the Software.

## 3. SOFTWARE MAINTENANCE SERVICES

- 3.1 Upon execution and return of this agreement, and provided payment of required fees is current by LICENSEE, LICENSER will provide the Software Maintenance Services as outlined in Schedule AB@ and in accordance with the Service Level specified above as outlined in more detail in Schedule AC@.
- 3.2 LICENSER agrees to provide Software Maintenance Services for Supported Products on Authorized Computers at the Authorized Stations specified in Schedule AA@.
- 3.3 LICENSER agrees to use its best efforts to maintain Third Party Software support services and provide Third Party Software upgrades deemed necessary by the LICENSER to support the Supported Products.
- 3.4 LICENSER shall be entitled, upon giving prior written notice to LICENSEE, to assign this Agreement and LICENSER=s rights hereunder, to any parent, subsidiary or affiliate of LICENSER.

## 4. LIMITATIONS OF SOFTWARE MAINTENANCE SERVICES

- 4.1 Unless otherwise stated in Schedule AB@, the following services are **not** supported under this Agreement:
  - (a) support of Products, other software, accessories, attachments, machines, systems or other devices not supplied by the LICENSER or not listed in Schedule "A";
  - (b) rectification of lost or corrupted data arising for any reason other than through LICENSER'S own negligence;
  - (c) support arising from any changes, alterations, additions, modifications or variations to the Supported Products or Authorized Computers made by the LICENSEE without the consent of the LICENSER;
  - (d) attendance to faults caused by LICENSEE using the Supported Products outside the design or other specifications or outside the provisions laid down in the User's Manual supplied with the Software;
  - (e) diagnosis and/or rectification of problems not associated with the Software of the Supported Products;

- (f) Software Problems arising from (1) the Products (or parts thereof) not being used in accordance with the LICENSER's instructions or if they have been improperly installed by the LICENSEE, its employees, agents or others for whom it is responsible in law; (2) the Products (including object code) being altered, modified or converted by LICENSEE without the written approval of the LICENSER; (3) any of Authorized Computers or other LICENSEE'S equipment malfunctioning causing the Supported Products to become inoperative; or (iv) any other cause within the control of the LICENSEE which shall result in any part of the Supported Products becoming inoperative or substantially deviating from the specifications in the applicable Users' Manual.
- (g) consulting services, including applications design or recommendations, or any custom purchase recommendations;
- (h) Supported Products not used with the Authorized Computers or used on a computer system other than those licensed for in the Software License Agreement.

4.2 UNLESS OTHERWISE EXPRESSLY STATED IN THE SUPPLY CONTRACT, LICENSER MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OF ANY KIND WHATSOEVER, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED BY VENDOR AND WAIVED BY LICENSEE. LICENSER SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, LICENSER'S MAXIMUM LIABILITY TO LICENSEE SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY LICENSEE TO LICENSER HEREUNDER DURING THE IMMEDIATELY PRECEDING TWELVE MONTHS.

## **5. LICENSEE RESPONSIBILITIES**

- 5.1 LICENSEE agrees to only use the Software Maintenance Services for occasions when a Software Problem arises relating to the Supported Products. Questions concerning adaptation or custom modification of the Supported Products are not covered by this Agreement. LICENSEE agrees to furnish descriptions of malfunctions in the form requested by LICENSER's support staff. LICENSEE also agrees to assist LICENSER in its efforts to replicate the Software Problem.
- 5.2 LICENSEE shall install and maintain for the duration of this Agreement, an appropriate modem and associated dial-up telephone line. LICENSEE shall pay for installation, maintenance and use of such equipment and associated telephone service charges. LICENSER, at its option, shall use this modem and telephone line in connection with Software Maintenance Services and shall pay telephone usage charges associated with support calls. Such access by LICENSER shall be subject to prior approval by the LICENSEE in each instance.
- 5.3 LICENSEE is responsible for and agrees to conduct regular data backups of Authorized Computers.
- 5.4 LICENSEE agrees to notify LICENSER if any changes are made to the Authorized Computers. Notification must be in writing thirty(30) days prior to the changes being made and are subject to approval by the LICENSER.
- 5.5 LICENSEE shall provide the name(s) of the Support Contact(s) to the LICENSER. LICENSEE agrees to notify LICENSER if any changes are made to the Support Contact(s). Notification must be in writing thirty(30) days prior to the changes being made and are subject to approval by the LICENSER.
- 5.6 LICENSEE shall provide reasonable access to Authorized Computers and Authorized Stations and necessary support required to enable LICENSER to provide Software Maintenance Services for Supported Products.

## **6. TERM AND TERMINATION OF AGREEMENT.**

- 6.1 The term of this Agreement shall commence upon termination of the Warranty Period as defined under the Software License Agreement, and shall continue for a period of one (1) year, after which it may be terminated by either party on sixty (60) days' prior written notice.
- 6.2 Unless terminated, this Agreement shall be automatically renewed for terms of one (1) year under the same terms, conditions and fees. LICENSER shall notify the LICENSEE, in writing, at least sixty (60) days prior to the end of the current term of the Agreement, if any of the terms, conditions and fees regarding the renewal of this Software Maintenance Agreement have changed.
- 6.3 In the event of termination of the Software License Agreement, or of the license granted therein, this Software Maintenance Agreement shall automatically terminate contemporaneously.
- 6.4 Violation of any provisions herein shall be the basis for immediate termination of this Software Maintenance Agreement, which termination shall be in addition to and not in lieu of any equitable remedies available to LICENSER. In such event, all maintenance fees or charges payable for the term of this Agreement shall become due and payable and the LICENSER's obligations under this Software Maintenance Agreement shall immediately end.

6.5 If the LICENSEE has early terminated this Agreement in accordance herein, the LICENSEE may only thereafter re-subscribe to Software Maintenance Services upon the terms, conditions, and fees prevailing at that time plus a reinstatement fee if applicable.

**7. FEES AND PAYMENT**

7.1 The fees for each Service Level of Software Maintenance Services are set out in Schedule AC@(ASoftware Maintenance Fees@). Any service requested or required by the LICENSEE outside the scope of the Software Maintenance Services in Schedule AB@ and the selected Service Levels in Schedule AC@ will be charged at LICENSER=s then current schedule of rates and will be in addition to the specified fees in Schedule AC@. A schedule of current rates can be provided upon written request of LICENSEE.

7.2 The fees shall be invoiced annually in advance. Where LICENSER performs additional services, such services shall be invoiced in arrears.

7.3 LICENSEE shall, in addition to the other amounts payable under this Agreement, pay all sales and other taxes, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement.

7.4 LICENSER reserves the right to charge for unusual or excess telephone, shipping, handling, media or user manual expenses in connection with Software Maintenance Services to be provided hereunder. In all cases, LICENSER shall notify the LICENSEE of these costs in advance.

**8. GENERAL**

8.1 The LICENSEE may not assign this Agreement to a third party without the transfer of the corresponding Software License and the prior written consent of LICENSER. This Agreement, residual applicable terms of the Supply Contract and the corresponding Software License Agreement shall be the only Agreements between the LICENSEE and LICENSER with respect to the Supported Products. They cannot be modified or amended unless a written amendment or modification is executed by LICENSER. These Agreements supersede all prior agreements, written or oral, relating to the Supported Products.

8.2 This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the locating of the LICENSEE=s address as hereinabove described. Any and all proceedings relating to the subject matter hereof shall be maintained in the courts of that location.

8.3 If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

8.4 The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

8.5 Unless otherwise agreed to by the parties in writing, all notices which any party may be required or desire to give to any other party shall be given in writing by personal service, registered mail or certified mail to the respective addresses set forth at the beginning of this Agreement. Mailed notices shall be deemed to be received on the fifth (5th) business day following the date of mailing.

8.6 This Agreement together with all Schedules or modifications now and hereafter made a part hereof shall be binding on the respective parties and their respective heirs, legal representatives, successors and permitted assigns.

8.7 If there is a conflict between this Agreement and the Schedules annexed hereto, the terms and conditions of the Schedules shall prevail.

LICENSER  
  
By: \_\_\_\_\_  
                    Authorized Signature  
  
Name: \_\_\_\_\_  
  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

LICENSEE  
  
By: \_\_\_\_\_  
                    Authorized Signature  
  
Name: \_\_\_\_\_  
  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**SCHEDULE A**

SUPPORTED PRODUCTS  
AUTHORIZED COMPUTERS  
AUTHORIZED STATIONS

**A1. SUPPORTED PRODUCTS:**

LIST OF SOFTWARE (Proprietary to LICENSER): Version

LIST OF THIRD PARTY SOFTWARE: Version

**A2. AUTHORIZED STATION(S):**

**A3. AUTHORIZED COMPUTER(S):**

## SCHEDULE B

### SOFTWARE MAINTENANCE SERVICES

The following Services will be provided by LICENSEE during the term of this Agreement.

- a. **Resolution of Software Problems:** LICENSER=s responsibility shall be limited to using best efforts to correcting or replacing, as soon as practicable, any substantial deviations in the Products (or any subsequent Product Enhancements or Product Upgrades of Products) from the specifications in the applicable users= manual which the LICENSER determines to be necessary at the LICENSER=s own cost and expense, provided written notice of such substantial deviations is received by the LICENSER during the term of this Software Maintenance Agreement.
- b. **Resolution of Third Party Software Problems:** LICENSER=s responsibility shall be limited to using best efforts and further limited by the Third Party Software manufacturer=s efforts to correcting or replacing reported Third Party Software Proble(s) The LICENSER cannot be held responsible for any delays in obtaining the necessary corrections after the Third Party Software Problem has been reported to the software manufacturer=s support organization. LICENSEE will maintain Third Party License Agreements necessary to obtain support.
- c. **Product Upgrades/Product Enhancements:** Product Upgrades will be provided as deemed necessary by LICENSER. Product Enhancements are not provided as part of the Software Maintenance Services. Product Enhancements can be provided for additional fees.
- d. **Third Party Software Upgrades:** LICENSER will provide upgrades to Third Party Software that are deemed necessary by LICENSER to maintain Supported Products.
- e. **Documentation Updates:** LICENSER will provide revised User Manual documentation that pertains to Product Upgrades.

**SCHEDULE C**  
**SERVICE LEVELS**

**Y SOFTWARE MAINTENANCE - LEVEL I**

**FEES: \$ \_\_\_\_\_**

This service provides:

1. E-MAIL. LICENSER will provide an e-mail address for LICENSEE to send a Software Trouble Report. LICENSER will respond back via e-mail including software programs and patches at LICENSER=s option.
2. TELEPHONE ASSISTANCE. The Support Contact can call LICENSER=s support telephone number and request telephone assistance with a Software Problem. LICENSER will make a Abest effort@ to respond within three (3) business days. Response time is not guaranteed.
3. MODEM SUPPORT. LICENSER will access LICENSEE=s Authorized Stations via modem to conduct Software Maintenance Services directly on LICENSEE=s Authorized Computers at LICENSER=s option.
4. WRITTEN PROBLEM ASSISTANCE. LICENSEES may submit written requests for Software assistance on forms provided by LICENSER by either mail or facsimile. LICENSER will make a Abest effort@ to respond within three (3) business days after LICENSER has received the written request. Response time is not guaranteed.

**Y SOFTWARE MAINTENANCE - LEVEL II**

**FEES: \$ \_\_\_\_\_**

This service provides:

1. SOFTWARE MAINTENANCE - LEVEL I services.
2. ENHANCED TELEPHONE ASSISTANCE. Telephone assistance shall be available weekdays from the hours of 9 am to 5 pm (Eastern Time) excluding holidays. Calls that are identified as urgent will be responded to within one (1) business day of receipt. Calls not identified as urgent will be responded to within two (2) business days.
3. ON-SITE ASSISTANCE. On-site assistance shall be available, if required, for legitimate Software Problems as determined by LICENSER and determined by the LICENSER not to be solvable via modem. LICENSER will respond on-site within seven (7) business days. Two (2) on-site visits included annually. LICENSEE, at its option, can use banked on-site visits(not used for software maintenance) for other purposes such as training to a maximum of ten(10) days annually.

**Y SOFTWARE MAINTENANCE - LEVEL III**

**FEES: \$ \_\_\_\_\_**

This service provides:

1. SOFTWARE MAINTENANCE - LEVEL II services.
2. PREMIUM TELEPHONE ASSISTANCE. Telephone assistance shall be available 24 hours a days, 7 days a week excluding holidays. Calls will be responded to within four (4) hours of receipt.
3. ENHANCED ON-SITE ASSISTANCE. Unlimited on-site assistance shall be available, if required, for legitimate Software Problems as determined by LICENSER and determined by the LICENSER not to be solvable via modem. LICENSER will respond on-site within four (4) business days. A maximum of two(2) on-site visits or ten(10)days whichever comes first can be used for other purposes such as training.

**Y SOFTWARE MAINTENANCE - LEVEL IV**

**FEES: \$ \_\_\_\_\_**

This service provides:

1. SOFTWARE MAINTENANCE - LEVEL III services.
2. RESIDENT ON-SITE ASSISTANCE. LICENSER shall provide a resident engineer on-site available weekdays from the hours of 9am to 5pm(EST) excluding holidays.