

System Agreement
Between

Tyler Technologies, Inc.

5808 4th Street
Lubbock, Texas 79416
(800) 646-2633
(806) 797-4849 Fax

AND

Wise County, TX

207 North Church
Decatur, TX 76234
Phone: (940) 627-5744
Fax: (940) 627-3388

tyler
TECHNOLOGIES, INC.

AGREEMENT

This agreement is entered into by and between Tyler Technologies, Inc., hereinafter referred to as COMPANY, located at 5808 4th Street, Lubbock, Texas 79416; and, Wise County, TX, hereinafter referred to as CLIENT on, September 22, 2009.

COMPANY and CLIENT agree as follows:

- 1. COMPANY shall furnish the products and services as described in this Agreement, and CLIENT shall pay the prices set forth in this Agreement.
- 2. This Agreement consists of this Cover and the following Attachments and Exhibits:
 - Section A Investment Summary (A-D)
 - Section B Addendum A
 - Section C COMPANY Agreement Terms and Conditions
- 3. The License Fees set forth in the Investment Summary are based on defined category levels. Placement within a category is based on the size of the organization serviced and measured by such factors as operating budget, number of employees, number of utility accounts, number of sworn officers, population of the entity, etc.

IN WITNESS WHEREOF, persons having been duly authorized and empowered to enter into this Agreement hereunto executed this Agreement effective as of the date last set forth below.

Client: Wise County, TX

By: *Bill McElhane*
 Signature
B. McElhane
 Printed Name
County Judge
 Title
09/22/2009
 Date
756001203
 Sales Tax Certificate Number

Tyler Technologies, Inc.: *S. Brett Cate*
 By: ~~_____~~ *S. Brett Cate*
 Signature
S. Brett Cate
 Printed Name
President, INCODE Solution
 Title
8/24/09
 Issue Date

Investment Summary

Prepared for:	Wise County, TX	Contract ID # :	2009-0133
Contact Person:	Bill McElhane	Issue Date:	8/24/09
Address:	207 North Church Decatur, TX 76234	Salesman:	M. Northcutt
Phone:	(940) 627-5744	Tax Exempt:	Yes / No
Fax:	(940) 627-3388		
Email:	cojudge@co.wise.tx.us		

Product Service & Equipment	On Signature	On Delivery	As Verified	As Progress Occurs	Totals	Maintenance
Total Applications Software						
License Fees	17,225.00	41,340.00	10,335.00		110,250.00	27,563.00
Less Preferred Customer Discount					(41,350.00)	
Total Professional Services						
On-Site Services				20,375.00	20,375.00	
Project Management				5,000.00	5,000.00	
Totals	17,225.00	41,340.00	10,335.00	25,375.00	94,275.00	27,563.00

Please Note: Travel expenses will be billed as incurred.

Public Safety Software License, Training and Maintenance Fees

Application Software	Pricing			Implementation			Annual Maintenance	
	QTY	License Fee	Discount %	Total License Fees	Estimated Hours	Estimated Services		Total Cost
Computer Aided Dispatch/Comm Center								
CAD	1	19,800	40%	11,880	48	6,000	17,880	4,950
Dispatcher (per seat)	3	9,900	40%	5,940			5,940	2,475
E-911 Server Interface	1	6,050	40%	3,630			3,630	1,513
E-911 Client Interface (per seat)	3	1,650	40%	990	12	1,500	2,490	413
NCIC Server Interface	1	7,700	40%	4,620			4,620	1,925
NCIC Client Interface (per seat)	3	4,125	40%	2,475	12	1,500	3,975	1,031
<i>Note: Does not include CJIS Adendum</i>								
Mobile Applications								
Mobile CAD Server with Messaging	1	9,900	40%	5,940			5,940	2,475
Mobile CAD Client	20	33,000	40%	19,800	60	7,500	27,300	8,250
Mobile AVL Client Add-on	20	5,000	40%	3,000			3,000	1,250
Mobile Network Services					30	3,750	3,750	
Mapping								
CAD Mapping Interface	5	6,250	40%	3,750	1	125	3,875	1,563
Professional Services								
Project Management	1					5,000	5,000	
NetMotion Clients w/ Policy Module (Mobile CAD)	1	6,875		6,875			6,875	1,719

Public Safety Sub Total		103,375		62,025	163	20,375	82,400	25,844
Project Management						5,000	5,000	
System Software		6,875		6,875			6,875	1,719
Total		110,250		68,900	163	25,375	94,275	27,563

Note: On-Site services are based on a 8 a.m. to 5 p.m. day.

Onsite Services are based on the following criteria:

Number of training sessions CAD: 3
Number of training sessions RMS: 1

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Addendum A

The following are clarifications and/or modifications to the standard Agreement. In the event of a conflict between Addendum A and the Agreement, Addendum A shall prevail.

1. Section entitled Hardware and System Software Agreement has been deleted.
2. Section entitled Annual Hardware Maintenance Agreement has been deleted.

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1. General Terms

1.1 General Payment Terms. The fees and other charges set forth on the Investment Summary shall be due and payable as follows:

- (a) License Fees: CLIENT shall pay to COMPANY the license fees as follows: (i) 25% upon execution of this Agreement; (ii) 60% upon delivery of the software products; and (iii) 15% upon the earlier of: (A) COMPANY's verification of the software products; (B) CLIENT's completion of its own validation process; or (C) CLIENT's live processing (each as set forth in Section 2.3 of the Software License Agreement). In no case, shall this period exceed thirty (30) days from live processing or one hundred-eighty (180) days from installation of the software.
- (b) Professional Services: All professional services fees and expenses shall be billed as delivered and incurred and shall be due and payable net 30 days.
- (c) Annual Software Maintenance Fees: The software license fees include six month's maintenance from the date the Software is installed; thereafter, annual software maintenance fees shall be billed annually in advance.
- (d) Hardware and System Software: Hardware and System Software fees shall be due and payable as follows: (i) 25% of the total Hardware and System Software fees upon execution of this Agreement; and (ii) the remaining 75% for each Hardware and System Software item upon delivery.
- (e) Annual Hardware Maintenance (if applicable): Annual hardware maintenance fees shall be billed and due and payable annually in advance beginning 12 months after installation of the hardware.
- (f) Third Party Products: Third Party Product fees shall be due and payable as follows: (i) 25% of all Third Party Products upon execution of this Agreement; and (ii) the remaining 75% of each Third Party Product upon delivery of each such product.
- (g) The fees and other charges set forth on the Investment Summary do not include any tax or other governmental impositions including, without limitation, sales, use or excise tax. All applicable sales tax, use tax, or excise tax shall be paid by CLIENT and shall be paid over to the proper authorities by CLIENT or reimbursed by CLIENT to COMPANY on demand in the event that COMPANY is responsible or demand is made on COMPANY for the payment thereof. If tax-exempt, CLIENT must provide COMPANY with CLIENT's tax-exempt number or form.

1.2 Invoicing. The COMPANY shall invoice the CLIENT in accordance with Section 1.1. In the event of any disputed invoice, CLIENT shall provide written notice of such disputed invoice to Attention: COMPANY Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to COMPANY within fifteen (15) days. An additional fifteen (15) days is allowed for the CLIENT to provide written clarification and details for the disputed invoice. COMPANY shall provide a written response to CLIENT that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by COMPANY and CLIENT to resolve any issues presented in CLIENT's notification to COMPANY. CLIENT may withhold payment of only the amount actually in dispute until COMPANY provides the required written response, and full payment shall be remitted to COMPANY upon COMPANY's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if COMPANY is unable to complete all material action steps required to remedy the disputed matter because CLIENT has not completed the action steps required of them, CLIENT shall remit full payment of the invoice. Any

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invoice not disputed as described above shall be deemed accepted by the CLIENT. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, COMPANY reserves the right to suspend delivery of all services under this Agreement.

- 1.3 **Cooperative Nature of Implementations.** CLIENT acknowledges that the implementation of the products identified on the Investment Summary is a cooperative process requiring the time and resources of CLIENT personnel. CLIENT shall, and shall cause CLIENT personnel to, use all reasonable efforts to cooperate with and assist the COMPANY as may be reasonably required to timely implement the systems. The COMPANY shall not be liable for failures to timely and effectively implement the systems when such failure is due to Force Majeure (as identified below) or to the failure by CLIENT personnel to provide such cooperation and assistance (either through action or omission).
- 1.4 **No Intended Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of COMPANY and CLIENT. No third party shall be deemed a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.
- 1.5 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of CLIENT's state of domicile.
- 1.6 **Entire Agreement.**
- (a) This Agreement, including the functional description of the software products found in COMPANY's written proposal to CLIENT, represents the entire agreement of CLIENT and COMPANY with respect to the items listed within the Investment Summary and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. CLIENT hereby acknowledges that in entering into this Agreement it did not rely on any representations or warranties other than those explicitly set forth in this Agreement and the functional description of the software products found in COMPANY's written proposal to CLIENT.
 - (b) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
 - (c) This Agreement may only be amended, modified, or changed by written instrument signed by both parties.
 - (d) CLIENT should return an executed copy of this Agreement to COMPANY. If the Agreement is not returned to COMPANY within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.
- 1.7 **Cancellation or Termination.** In the event of cancellation or termination of this Agreement, CLIENT will make payment to COMPANY for all software products, services and expenses delivered or incurred prior to the termination or cancellation of this Agreement.
- 1.8 **General Limitation of Liability.** In no event shall CLIENT or COMPANY be liable to the other party for incidental, consequential, exemplary, indirect, or special damages of any kind or nature, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with this Agreement, irrespective of whether the parties have advance notice of the possibility of such damage.

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- 1.9 **Approval of Governing Body.** CLIENT represents and warrants to COMPANY that this Agreement has been approved by its governing body and is a binding obligation upon CLIENT. CLIENT represents and warrants that funds are appropriated and/or arrangements have been made with a third party financier.
- 1.10 **Non-Assignability.** The CLIENT shall not have the right to assign or transfer its rights hereunder to any party.
- 1.11 **Force Majeure.** COMPANY shall not be responsible for delays in performing its obligations hereunder to the extent that such delays are caused by strikes, lockouts, riots, epidemic, war, government regulations, fire, power failure, acts of God, or other causes beyond its control.
- 1.12 **Dispute Resolution.** In the event of a dispute between the parties under this Agreement that cannot be resolved by good faith negotiations between the parties, the matter shall be settled by arbitration in accordance with the then prevailing rules of the American Arbitration Association.

2. Software License Agreement

2.1 Software Product License.

- (a) Upon CLIENT's timely payment in full of the software products license fees set forth in the Investment Summary of this Agreement, COMPANY shall grant to CLIENT and CLIENT shall accept from COMPANY, a non-exclusive, nontransferable, non-assignable license to use the software products and accompanying documentation for the internal business purposes of CLIENT only, subject to the conditions and limitations in this Software License Agreement.
- (b) CLIENT shall not (i) reverse engineer, de-compile, or disassemble any portion of the software products or (ii) sublicense, transfer, rent, or lease the software products.
- (c) Ownership of the software products, accompanying documentation and related materials, and any modifications and enhancements to such software products and any related interfaces shall remain with COMPANY.
- (d) The software products are not licensed to perform functions or processing for subdivisions or entities that were not considered by COMPANY at the time COMPANY issued this Agreement.
- (e) The right to transfer this license to a replacement hardware system is included in this Software License Agreement. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to CLIENT. Advance written notice of any such transfer shall be provided to COMPANY.
- (f) CLIENT agrees that the software products, any modifications and enhancements, and any related interfaces are proprietary to COMPANY and have been developed as a trade secret at COMPANY's expense. To the extent permitted by law, CLIENT agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the software products or accompanying documentation.
- (g) If CLIENT has made modifications to the software products, COMPANY will not support or correct errors in the modified software products, unless modifications were specifically authorized in writing by COMPANY.
- (h) CLIENT may make copies of the software products for archive purposes only. CLIENT will repeat any proprietary notice on the copy of the software products. The documentation accompanying the software products may not be copied except for internal use.

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- (i) The term of the license granted by this Section shall be perpetual.
 - (j) COMPANY maintains an escrow agreement with an Escrow Services Company under which COMPANY places the source code of each major release. At CLIENT's request, COMPANY will add CLIENT as a beneficiary on its escrow account. CLIENT will be invoiced the annual beneficiary fee by COMPANY and is solely responsible for maintaining its status as a beneficiary.
- 2.2 License Fees.** CLIENT agrees to pay COMPANY, and COMPANY agrees to accept from CLIENT as payment in full for the license herein, the total sum of the COMPANY license fees set forth in the Investment Summary in accordance with the payment provisions set forth in Section 1.1.
- 2.3 Verification of the Software Products.**
- (a) At the CLIENT's request, within thirty (30) days after the software products have been installed on CLIENT's system, COMPANY will test the software products in accordance with COMPANY's standard verification test procedure. Demonstration shall constitute CLIENT's verification that the software products substantially comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT.
 - (b) At its option, CLIENT may perform CLIENT's own defined internal validation process to test the software to substantially comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT. Such validation test shall constitute CLIENT's verification.
 - (c) Notwithstanding anything contrary herein, CLIENT's use of the software products for its intended purpose shall constitute CLIENT's verification of the software products, without exception and for all purposes.
 - (d) Verification or validation, by CLIENT, that the software products substantially comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT shall be final and conclusive, except for latent defect, fraud, and such gross mistakes that amount to fraud. In the event said verification becomes other than final, or becomes inconclusive, pursuant to this paragraph, CLIENT's sole right and remedy against COMPANY shall be to require COMPANY to correct the cause thereof.
 - (e) COMPANY shall correct any functions of the software products which failed the standard verification testing or failed to comply with COMPANY's current specifications for the most current version of the software products and functional descriptions of the software found in COMPANY's written proposal to CLIENT. If CLIENT has made modifications to the software programs, COMPANY will not make such corrections, unless such modifications were specifically authorized in writing by COMPANY.
- 2.4 Schedule of Verification.** COMPANY will install the software products and cause the same to be verified within sixty (60) days after CLIENT makes available to COMPANY the equipment into which the software product is to be loaded. COMPANY shall exercise reasonable efforts to cause the software products to be verified according to the schedule set forth in this paragraph, but COMPANY shall not be liable for failure to meet said schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of COMPANY.
- 2.5 Limited Warranty.** COMPANY warrants that the then current, unmodified version of the COMPANY Software Products will substantially conform to the then current version

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of its published current specifications. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED OR VERBAL, STATUTORY OR OTHERWISE, AND WHETHER ARISING UNDER THIS AGREEMENT OR OTHERWISE ARE HEREBY EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.6 **Intellectual Property Indemnity.**

In the event that the software products are determined to infringe upon any existing United States patent copyright or trademark rights held by any other person or entity, COMPANY shall defend and hold harmless CLIENT and its officers, agents and employees from any claim or proceedings brought against CLIENT and from any cost damages and expenses finally awarded against CLIENT which arise as a result of any claim that is based on an assertion that CLIENT's use of the software products under this Software License Agreement constitutes an infringement of any United States patent, copyright or trademark provided that CLIENT notifies COMPANY promptly of any such claim or proceeding and gives COMPANY full and complete authority, information and assistance to defend such claim or proceeding and further provided that COMPANY shall have sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement provided that COMPANY shall consult with CLIENT regarding such defense. In the event that the software products are finally held to be infringing and its use by CLIENT is enjoined, COMPANY shall, at its election; (1) procure for CLIENT the right to continue use of the software products; (2) modify or replace the software products so that it becomes non-infringing; or (3) if procurement of the right to use or modification or replacement cannot be completed by COMPANY, terminate the license for the infringing software product, and upon termination, refund the license fees paid for the infringing software product as depreciated on a straight-line basis over a period of seven (7) years with such depreciation to commence on the execution of this Agreement. COMPANY shall have no liability hereunder if CLIENT modified the software products in any manner without the prior written consent of COMPANY and such modification is determined by a court of competent jurisdiction to be a contributing cause of the infringement or if the infringement would have been avoided by CLIENT's use of the most current revision of the software products. The foregoing states COMPANY's entire liability and CLIENT's exclusive remedy with respect to any claims of infringement of any copyright, patent, trademark, or any property interest rights by the software products, any part thereof, or use thereof.

2.7 **Limitation of Liability.**

If the Software Products do not perform as warranted prior to the initiation of paid annual maintenance, COMPANY's sole obligation will be to use reasonable efforts, consistent with industry standards, to cure the defect. Should COMPANY be unable to cure the defect or provide a TYLER replacement product, CLIENT shall be entitled to a refund for the license fee paid for application, which shall be CLIENT'S sole and exclusive remedy for damages hereunder, whether based on a theory of contract or tort. The license fees set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Software License Agreement. Upon the initiation of paid annual software maintenance, COMPANY'S obligations and liabilities shall be as set forth in Section 4, Annual Software Maintenance Agreement.

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3. Professional Services Agreement

3.1 Services Provided. COMPANY shall provide some or all of the following services to CLIENT, as evidenced in the attached Investment Summary:

- (a) Installation as described in the Investment Summary;
- (b) Conversion of CLIENT's existing data as set forth in the Investment Summary. CLIENT is responsible for reading and complying with COMPANY's Conversion Statement.
- (c) Training/Implementation as set forth in the Investment Summary;
- (d) Consulting/Analysis as set forth in the Investment Summary; and
- (e) Verification Testing as described in the Software License Agreement.

3.2 Professional Services Fees.

- (a) Notwithstanding specific prices to the contrary identified in the Investment Summary, all services will be invoiced in hourly increments as delivered, plus travel and other expenses, plus a 10% travel processing fee. CLIENT agrees to pay COMPANY for the actual amount of training provided. CLIENT acknowledges that the Investment Summary represents only an estimate of time required to complete all phases of this Agreement.
- (b) Upon the completion of each service day, or group of days, COMPANY will present a Daily Log. CLIENT will sign the report indicating acceptance of the service day and its subsequent billing, or noting reasons for CLIENT's non-acceptance of such. This acceptance is final.
- (c) CLIENT is not charged for travel time to and from the CLIENT's site. Only time spent on-site is billed as training time, with the exception of those cases in which the CLIENT requires the COMPANY trainer(s) to travel on the weekend, in which case CLIENT will be billed for weekend travel time at a rate of \$500 per weekend day.
- (d) If CLIENT travels to COMPANY location for training, then CLIENT agrees to pay all expenses related to transportation of CLIENT's employees.
- (e) All requests for supporting documentation shall be made within thirty (30) calendar days of invoice delivery. Such documentation will consist of quoted internet rates within 7 days from the date the request is received by the COMPANY and not actual receipts. Such quotes will be deemed acceptable documentation if price is within 25% of actual amounts charged to CLIENT, adjusted by unusual or seasonal travel circumstances.
- (f) The rates for Verification Testing shall be the same as the Training/Implementation rates set forth in the Investment Summary.

3.3 Training Environment. If training is being conducted at the CLIENT's site, the CLIENT is responsible for providing a productive environment to conduct training. COMPANY is not responsible for its inability to conduct training or for inadequate training arising due to interruptions and/or unavailability of CLIENT personnel to be trained. Time spent on-site by COMPANY that results in non-productive training time beyond COMPANY's control will be billed as training time. COMPANY will make reasonable efforts to schedule training on dates requested by the CLIENT. Trainers will be on-site approximately noon Monday through noon Friday. This allows appropriate travel time to and from the CLIENT's site.

3.4 Additional Services. Services utilized in excess of those set forth in the Investment Summary and additional related services not set forth in the Investment Summary will be billed at COMPANY's then current market rate for the service as they are incurred. Travel and other expenses, plus a 10% travel processing fee, will be billed as delivered.

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- 3.5 **Limitation of Liability.** COMPANY shall not be liable for inaccurate data in COMPANY's application software which is the result of conversion of inaccurate data from the previous system. COMPANY's liability for damages arising out of this Professional Services Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the professional service fees identified in the Investment Summary.
4. **Annual Software Maintenance Agreement**
- 4.1 **Scope of Agreement.** The CLIENT agrees to purchase and COMPANY agrees to provide services for the software products listed in the Investment Summary of this Agreement in accordance with the following terms and conditions. Both parties acknowledge that this Annual Software Maintenance Agreement covers both support for the software products listed in the Investment Summary of this Agreement and licensing of updates of such installed software products.
- 4.2 **Term of Agreement.** This Annual Software Maintenance Agreement is effective on the date executed by an officer of COMPANY and shall have a term beginning upon the first of the month six months after the installation of the COMPANY software and ending upon the last day of the month one year following that date.
- (a) This Annual Software Maintenance Agreement will automatically renew for subsequent one-year terms unless either party gives the other party at least thirty days prior written notice of its intent not to renew prior to the expiration of the then current term. Fees for subsequent years are subject to change.
- (b) If CLIENT has not elected to participate in the COMPANY Annual Software Maintenance Agreement, or elects not to renew the Annual Software Maintenance Agreement, the CLIENT shall acquire Software maintenance in accordance to the Section entitled "Support Terms for CLIENTs Not Participating in the Annual Software Maintenance Agreement".
- 4.3 **Payment.**
- (a) CLIENT agrees to pay COMPANY the amount identified in the Investment Summary for licensing and support services of the software products in accordance with the payment provisions set forth in Section 1.1.
- (b) **Additional Charges.** Any maintenance performed by COMPANY for the CLIENT, which is not covered by this Annual Software Maintenance Agreement, will be charged at COMPANY's then current market rates. All materials supplied in connection with such non-covered maintenance or support plus expenses will be charged to CLIENT.
- (c) Support and services will be suspended whenever CLIENT's account is thirty (30) calendar days overdue and shall be reinstated when CLIENT's account is made current.
- 4.4 **Licensing of Updates, Releases, and New Versions of the Installed Software Products.**
- (a) In consideration for the payment of the annual maintenance fees, CLIENT'S license of the COMPANY'S installed software products set forth in the Investment Summary shall be extended to include any and all updates, releases, and/or new versions of the installed software products delivered to CLIENT under this Annual Software Maintenance Agreement, subject to the terms, conditions, and restrictions set forth in Section 2.1 of the Software License Agreement.

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- (b) For as long as a current Annual Software Maintenance Agreement is in place, COMPANY shall promptly correct any functions of the software products which fail to substantially comply with COMPANY's current specifications for the most current version of the software products. If CLIENT has made modifications to the software products, COMPANY will not make such corrections, unless modifications were specifically authorized in writing by COMPANY.
- (c) COMPANY reserves the right to change the functionality of future releases of its software and CLIENT understands that COMPANY is not obligated to include specific functionality in future releases unless provided for herein.

4.5 Terms and Conditions for Support.

- (a) COMPANY shall provide software related CLIENT support during standard support hours. Currently, standard support hours are from 7:00am to 7:00pm, Central Standard Time, Monday thru Friday, excluding holidays. COMPANY reserves the right to modify these support hours as COMPANY sees fit in order to better serve its entire client base. Assistance and support requests which require special assistance from COMPANY's development group will be taken and directed by support personnel.
- (b) COMPANY will maintain staff that is appropriately trained to be familiar with the software products in order to render assistance, should it be required.
- (c) COMPANY will provide CLIENT with all updates that COMPANY may make to the then current version of the installed software products covered in this Agreement.
- (d) CLIENT acknowledges that the updates/enhancements may not be compatible with CLIENT's particular hardware configuration or operating system. CLIENT acknowledges that additional hardware and software may be required at the CLIENT's expense in order to utilize the updates/enhancements.
- (e) COMPANY will make available appropriately trained personnel to provide CLIENT additional training, program changes, analysis, consultation, recovery of data, conversion, non-coverage maintenance service, etc., billable at the current per diem rate plus expenses. *COMPANY employs many CPAs but is not a board registered CPA firm.*
- (f) COMPANY shall provide CLIENT with remote support through the use of secure connection over the Internet connection via Citrix GotoAssist. If CLIENT will not allow access through GotoAssist, COMPANY cannot guarantee support standards will be met.

4.6 Support Terms for CLIENTs Not Participating in the Annual Software Maintenance Agreement.

The Software License Agreement includes six months free maintenance. If CLIENT elects not to participate in the COMPANY Annual Software Maintenance Agreement, CLIENT shall receive support on a Time and Materials basis following six months after the COMPANY Software is installed in accordance with the following terms:

- (a) CLIENTs not on Software Support Maintenance will receive the lowest priority for Software Support.
- (b) CLIENTs not on Software Support Maintenance will be required to purchase new releases of the Software. New Releases will include fixes, enhancements and updates, such as, Tax Tables, W/2 reporting formats, 1099 changes, etc.
- (c) CLIENTs not on Software Support Maintenance will be charged \$175 per hour with a one-hour minimum for all software support calls.
- (d) CLIENTs not on Software Support Maintenance will not be granted access to COMPANY's software support web-site.

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- (e) CLIENTs not on Software Support Maintenance are subject to higher rates for training and continuing education performed by COMPANY employees. This is due to the fact that the CLIENT may not be utilizing the most current version of our software.
- (f) COMPANY will not guarantee a program fix to a documented bug for software versions that are not the currently released version. Because every CLIENT is on Software Support Maintenance, often times, bug fixes are rolled into the latest release and then sites are upgraded to the latest release of the software.
- (g) If a CLIENT decides to discontinue Software Support Maintenance and later chooses to reinstate Software Support Maintenance, the CLIENT will be required to pay the portion of annual software support maintenance fees for the Enhancement and Software Updates (27%) dating back to the date when the CLIENT discontinued Software Support Maintenance.

4.7 Additional Services. The services listed below are not included in the COMPANY Software Maintenance Agreement. These services shall be provided at COMPANY's discretion and will be billed on a Time and Materials basis at COMPANY's then current rates:

- (a) Changes to print programs;
- (b) Software modifications;
- (c) Software Training;
- (d) Responding to problems caused by bad data;
- (e) Responding to problems caused by hardware;
- (f) Responding to problems caused by operator error;
- (g) Responding to problems caused by software that is not COMPANY software;
- (h) Responding to problems resulting from misuse, accidents, CLIENT neglect, fire, or any other cause not within COMPANY's reasonable control;
- (i) Changes made to the COMPANY Software by someone other than COMPANY personnel; and
- (j) Any other services performed by COMPANY not otherwise specifically provided for in this Agreement, including but not limited to, bank reconciliation, reconciling out of balance reports, balancing segments of the system, etc.

4.8 Limitations and Exclusions. The support and services of this Annual Software Maintenance Agreement do not include the following:

- (a) Support service does not include the installation of the software products, onsite support, application design, and other consulting services, support of an operating system or hardware, or any support requested outside of standard support hours.
- (b) CLIENT shall be responsible for implementing, at its expense, all changes to the current version. CLIENT understands that changes furnished by COMPANY for the current version are for implementation in the current installed software products version, as it exists without customization or CLIENT alteration.
- (c) If CLIENT has made modifications to the software products, COMPANY will not support the modified software products, unless modifications were specifically authorized in writing by COMPANY.

4.9 CLIENT Responsibilities.

- (a) CLIENT shall provide, at no charge to COMPANY, full and free access to the software programs covered hereunder, including the following: working space; adequate facilities within a reasonable distance from the equipment; and use of machines, attachments, features, or other equipment necessary to provide the specified support and maintenance service. Such environment includes, but is not limited to, use of the appropriate operating system at the version and release levels

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specified by COMPANY and additionally specifies that the environment for any COMPANY software application requires the CLIENT to have e-mail and Internet access. CLIENT will be responsible for all additional costs incurred to the extent such hardware and software does not conform to COMPANY's current specifications. The acquisitions of necessary hardware and software meeting the requirements then in effect shall be sole responsibility of the CLIENT.

- (b) CLIENT shall maintain a high speed internet connection (DSL, Cable, or faster) and must be able to provide COMPANY with IP connection to CLIENT's network through Citrix GotoAssist, VPN, Citrix, or Microsoft Terminal Services. COMPANY shall use the connection to assist with problem diagnosis and resolution. COMPANY is not responsible for purchase of VPN client software license or configuration of CLIENT's firewall settings. If CLIENT will not allow access through GotoAssist, COMPANY cannot guarantee support standards will be met.
 - (c) CLIENT must maintain an active e-mail address capable of receiving a 5 MB attachment. This e-mail account must be accessible from a PC connected to the server hosting the COMPANY software applications.
 - (d) CLIENT must open firewall ports to enable access to COMPANY's FTP server for program updates via Live Update.
 - (e) CLIENT is responsible for reading and complying with COMPANY's Systems Requirements.
- 4.10 Limitation of Liability. Upon the initiation of maintenance and support services under this Annual Maintenance Agreement, the liability of COMPANY, whether based on a theory of contract or tort, shall be limited to fixing defects in accordance with the terms herein, and if the COMPANY cannot fix defects, to the fees paid by CLIENT for services under this Annual Software Maintenance Agreement.**

5. Hardware and System Software Agreement

- 5.1 Agreement to License or Sell Hardware.** For the price set forth in the Investment Summary (Hardware & System Software), COMPANY agrees to license or sell and deliver to CLIENT, and CLIENT agrees to accept from COMPANY, the hardware and system software products set forth in the Investment Summary.
- 5.2 License of Hardware.**
Upon CLIENT's payment for the hardware listed in the Investment Summary, for the license fees set forth in the Investment Summary, COMPANY shall grant to CLIENT and CLIENT shall accept from COMPANY a non-exclusive, nontransferable, non-assignable license to the hardware and system software products and accompanying documentation and related materials for internal business purposes of CLIENT, subject to the conditions and limitations in this section.
- 5.3 Price and Costs.**
- (a) CLIENT agrees to pay COMPANY and COMPANY agrees to accept from CLIENT as payment in full for the hardware and system software products the price set forth in the Investment Summary in accordance with the payment provisions set forth in Section 1.1.
 - (b) Unless otherwise indicated in the Investment Summary, the price includes costs for shipment of and insurance while in transit for the hardware and system software products from the supplier's place of manufacture to CLIENT's site.
- 5.4 F.O.B. Point.** Delivery of each hardware and system software product shall be F.O.B. CLIENT's site.

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- 5.5 **Schedule of Delivery.** Delivery of each hardware and system software product shall take place according to mutually agreeable schedule, but COMPANY shall not be liable for failure to meet the agreed upon schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of COMPANY.
- 5.6 **CLIENT Delays.** If any act or failure to act by the CLIENT delays COMPANY's performance, COMPANY shall be excused from performance for an amount of time commensurate with the delay caused by CLIENT. CLIENT acknowledges that its delay may excuse COMPANY from performance for an amount of time greater than the delay caused by CLIENT. Such delays by CLIENT that may cause COMPANY to delay performance include, but are not limited to, failure to have prepared any data in the form and format requested by COMPANY, on or before the date specified by COMPANY or to have verified such data for accuracy, submission of erroneous data to COMPANY or CLIENT's failure to have completely prepared the Hardware's installation site prior to the Hardware's actual delivery including, but not limited to, failure to have all electrical work and cable installation completed.
- 5.7 **Installation and Verification.** If itemized in the Investment Summary, the price includes installation of the hardware and system software products. Upon the completion of installation, CLIENT shall obtain from the installer a certification of completion, or similar document, which certification or similar document shall constitute CLIENT's acceptance of the hardware and system software products. Such acceptance shall be final and conclusive except for latent defects, fraud, and such gross mistakes as amount to fraud.
- 5.8 **Site Requirements.** CLIENT shall prepare the installation site prior to the delivery of the hardware and system software. CLIENT is solely responsible for and will furnish all necessary labor and material to install all associated electrical lines, CRT cables, and telephone lines for communication modems. CLIENT is responsible for installing all required cables.
- 5.9 **Warranties.**
ALL WARRANTIES RELATING TO THE HARDWARE AND SYSTEM SOFTWARE ARE PROVIDED DIRECTLY FROM THE HARDWARE MANUFACTURERS AND/OR SOFTWARE PUBLISHERS UNDER THE TERMS AND CONDITIONS OF THEIR RESPECTIVE WARRANTIES. THE WARRANTIES SET FORTH IN THIS HARDWARE AND SYSTEM SOFTWARE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES REPRESENTATIONS OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.
- 5.10 **Maintenance.** There is no hardware maintenance provided pursuant to this Agreement. Hardware warranty and/or maintenance are typically provided by the manufacturer or a Third Party. In situations where COMPANY and the CLIENT agree that COMPANY will provide hardware maintenance, such hardware maintenance shall be governed by the terms of COMPANY's Annual Hardware Maintenance Agreement.
- 5.11 **Limitation of Liability.** CLIENT expressly assumes sole responsibility for the selection and use of the hardware and system software. COMPANY's liability for damages arising out of this Hardware and System Software Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the price of the hardware and system software products set forth in the Investment Summary. The prices set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Hardware and System Software Agreement.

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6. **Annual Hardware Maintenance Agreement**
- 6.1 **Scope of Agreement.** For the prices set forth in the Investment Summary, CLIENT agrees to purchase, and COMPANY agrees to provide, services for the equipment specified therein in accordance with the following terms and conditions. COMPANY requires all like-kind hardware to be covered (i.e. ALL cash drawers, ALL receipt printers, etc.).
- 6.2 **Price and Payment.** The CLIENT agrees to pay the Annual Hardware Maintenance fee specified in the Investment Summary. COMPANY guarantees this fee for the then current term of the Annual Hardware Maintenance Agreement; however, fees for subsequent years are subject to change. CLIENT shall pay the annual hardware maintenance fees in accordance with the payment provisions set forth in Section 1.1.
- 6.3 **Equipment Maintenance Program Terms.** COMPANY agrees to provide the maintenance on the equipment specified under this Annual Hardware Maintenance Agreement in accordance to the following terms:
- (a) In the event of equipment failure, COMPANY will repair the defective equipment and provide the CLIENT with "like or near like" equipment while the defective equipment is being repaired.
 - (b) CLIENT shall notify COMPANY of equipment failure. Upon notification, COMPANY will ship via over-night service to the CLIENT the appropriate loaner equipment. The CLIENT shall package the defective equipment in its original container and ship the equipment to COMPANY.
 - (c) Once the equipment is repaired, it will be shipped to the CLIENT. Upon receipt of the repaired equipment, the CLIENT shall ship the loaner equipment back to COMPANY. The loaner equipment should be shipped back to COMPANY within two days of receiving the repaired equipment. The CLIENT agrees to pay daily rental fees to COMPANY if the loaner equipment is not shipped back to COMPANY within the time frame specified.
 - (d) The CLIENT is responsible for shipping cost related to shipping equipment to COMPANY. COMPANY is responsible for shipping cost related to shipping equipment to the CLIENT.
- 6.4 **Definitions.** The following definitions apply to the terms of this Annual Hardware Maintenance Agreement:
- (a) **Loaner Equipment:** equipment loaned to the CLIENT by COMPANY for use while the CLIENT's equipment is being repaired.
 - (b) **Like or Near-Like Equipment:** equipment compatible with the CLIENT's computer system and capable of performing the tasks performed by the equipment being repaired.
- 6.6 **Limitation of Liability.** COMPANY's liability for damages arising out of this Annual Hardware Maintenance Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the annual fees paid hereunder.
7. **Third Party Product Agreement**
- 7.1 **Agreement to License or Sell Third Party Products.** For the price set forth in the Investment Summary (Hardware & System Software), COMPANY agrees to license or

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sell and deliver to CLIENT, and CLIENT agrees to accept from COMPANY the third party products set forth in the Investment Summary.

7.2 **License of Third Party Software Products.**

- (a) Upon CLIENT's payment for the third party software products listed in the Investment Summary, for the license fees set forth in the Investment Summary, COMPANY shall grant to CLIENT and CLIENT shall accept from COMPANY a non-exclusive, nontransferable, non-assignable license to use the third party software products and accompanying documentation and related materials for the internal business purposes of CLIENT only, subject to the conditions and limitations in this section.
- (b) Ownership of the third party software products, accompanying documentation, and related materials shall remain with the third party manufacturer or supplier.
- (c) The right to transfer this license to a replacement hardware system is governed by the Third Party. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to CLIENT. Advance written notice of any such transfer shall be provided to COMPANY.
- (d) CLIENT agrees that the third party software products are proprietary to the third party manufacturer or supplier and have been developed as a trade secret at the third-party's expense. To the extent permitted by law, CLIENT agrees to keep the third party software products confidential and use its best efforts to prevent any misuse, unauthorized use or unauthorized disclosures by any party of any or all of the third party software products or accompanying documentation.
- (e) CLIENT shall not perform de-compilation, disassembly, translation or other reverse engineering on the software products.
- (f) CLIENT may make copies of the software products for archive purposes only. CLIENT will repeat any proprietary notice on the copy of the software products. The documentation accompanying the software products may not be copied except for internal use.

7.3 **Price and Payment; Costs.**

- (a) CLIENT agrees to pay COMPANY and COMPANY agrees to accept from CLIENT as payment in full for the third party products, the price set forth in the Investment Summary in accordance with the payment provisions set forth in Section 1.1.
- (b) Unless otherwise indicated in the Investment Summary, the price includes costs for shipment of and insurance while in transit for the third party products from the supplier's place of manufacture to CLIENT's site.

7.4 **F.O.B. Point.** Delivery of each third party product shall be F.O.B. CLIENT's site.

7.5 **Schedule of Delivery.** Delivery of each third party product shall take place according to mutually agreeable schedule, but COMPANY shall not be liable for failure to meet the agreed upon schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of COMPANY.

7.6 **Installation and Verification.**

If itemized in the Investment Summary, the price includes installation of the third party products. Upon the completion of installation, CLIENT shall obtain from the installer a certification of completion, or similar document, which certification or similar document shall constitute CLIENT's acceptance of the third party products. Such acceptance shall be final and conclusive except for latent defects, fraud, and such gross mistakes as amount to fraud.

7.7 **Site Requirements.** CLIENT shall provide:

- (a) a suitable environment, location, and space for the installation and operation of the third party products;

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- (b) sufficient and adequate electrical circuits for the third party products; and
- (c) installation of all required cables.

7.8

Warranties.

- (a) COMPANY is authorized by the manufacturer or supplier of all third party software products listed in the Investment Summary to grant licenses or sublicenses to such products.
- (b) Unless otherwise noted in any attached addendum, COMPANY warrants that each third party product shall be new and unused, and if CLIENT fully and faithfully performs each and every obligation required of it under the Third Party Product Agreement, CLIENT's title or license to each third party product shall be free and clear of all liens and encumbrances arising through COMPANY.
- (c) The parties understand and agree that COMPANY is not the manufacturer of the third party products. As such, COMPANY does not warrant or guarantee the condition of the third party products or the operation characteristics of the third party products.
- (d) THE WARRANTIES SET FORTH IN THIS THIRD PARTY PRODUCT AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES REPRESENTATIONS OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

7.9

Maintenance. It shall be the responsibility of CLIENT to repair and maintain the third party products after acceptance. Support for Third Party Application Software is not provided by COMPANY unless otherwise specified in this Agreement. COMPANY's responsibility is limited to delivering the Third Party Application Software and installing the software if installation services are provided in this Agreement.

7.10

Limitation of Liability. CLIENT expressly assumes sole responsibility for the selection and use of the Third Party Application Software. COMPANY's liability for damages arising out of this Third Party Product Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the price of the third party products set forth in the Investment Summary. The prices set forth in the Investment Summary reflect and are set in reliance upon this allocation of risk and the exclusion of such damages as set forth in this Third Party Product Agreement.

8.

General Return Merchandise Authorization (RMA) Policy.

- (a) In order to return or replace any product ordered from COMPANY, CLIENT will need to request and obtain an RMA number from appropriate COMPANY personnel. RMA numbers will be issued at the discretion of COMPANY and products returned without an RMA number may be refused by COMPANY. COMPANY reserves the right to refuse the return of any product or to refuse the issuance of an RMA number.
- (b) All shipping costs are the responsibility of the CLIENT. COMPANY recommends the use of a traceable and insurable shipping source. COMPANY will not be responsible for lost or damaged products as a result of the shipping process.
- (c) Qualifying products must be returned unopened with original packaging and materials unless otherwise agreed upon by COMPANY. The following situations will result in the refusal of an RMA number and credit will not be issued to client:
 - Opened inkjet or laser jet printers;
 - Opened Third Party Software; or
 - Damaged products as a result of irregular use or mishandling by customer.
- (d) Products may only be returned to COMPANY for account credit after an RMA number has been issued by COMPANY. All returns are subject to a restocking fee of 20% of original purchase price. Failure to comply with this policy will result in a refusal of credit and future product placement.