

Support Agreement

This Support Agreement ("this Agreement") is made and entered into this ____ day of _____, 20__, by and between _____ (hereinafter "Support Organization"), a [specify type of organization], with principal offices at _____, and _____ (hereinafter "Customer"), a [specify type of organization], with principal offices at _____:

WITNESSETH:

WHEREAS, _____ ("Licensor") and Customer entered into that certain End-User Agreement dated _____, 19__ (the "License Agreement") under which Customer obtained a non-exclusive, nontransferable license to use certain computer programs in object code form and related user documentation (the "Licensed Program") on certain terms and conditions;

WHEREAS, Support Organization has obtained, under separate agreement with the owner of Licensed Program, the source code and other support documentation for the Licensed Program and has obtained the requisite authorization to have access to the Licensed Program in Customer's possession and to make and offer to Customer the maintenance modifications, enhancements, and new releases provided for herein; and

WHEREAS, Support Organization desires to offer Customer certain services with respect to the Licensed Program on the terms and

conditions set forth herein;

NOW THEREFORE, in consideration of the premises hereof, and the mutual obligations herein, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1

DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply to the respective capitalized terms:

1.1 "Enhancement." Any modification or addition that, when made or added to the Licensed Program, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Enhancements may be designated by Support Organization as minor or major, depending on Support Organization's assessment of their value and of the function added to the preexisting Licensed Program.

1.2 "Error." Any failure of the Licensed Program to conform in all material respects to its functional specifications as published from time to time by Licensor, the current version of which is attached as Exhibit A hereto [omitted]. However, any nonconformity resulting from Customer's misuse, improper use, alteration, or damage of the Licensed Program or Customer's combining or merging the Licensed Program with any hardware or software not supplied by or identified as compatible by Licensor or Support Organization, shall not be considered an Error.

1.3 "Error Correction." Either a modification or addition

that, when made or added to the Licensed Program, establishes material conformity of the Licensed Program to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Program, eliminates the practical adverse effect on Customer of such nonconformity.

1.4 "Licensed Program." The computer programs described in Exhibit B hereto [omitted], including any extracts from such programs, derivative works of such programs, or collective works including such programs (e.g., subsequent Releases) to the extent offered to Customer under this Agreement or the License Agreement.

1.5 "Normal Working Hours." The hours between ____ A.M. and ____ P.M. on the days _____ through _____, excluding regularly scheduled holidays of Support Organization.

1.6 "Releases." New versions of the Licensed Program, which may include both Error Corrections and Enhancements.

1.7 "Term." An initial period of ____ year(s) commencing on the first day following the warranty period that applies to the Licensed Program pursuant to the License Agreement. Thereafter, the Term shall automatically renew for successive periods of one (1) year each unless and until terminated pursuant to Section 6 hereof. In no event, however, shall the Term extend beyond the prescribed term of the License Agreement.

Section 2

SCOPE OF SERVICES

During the Agreement Term, Support Organization shall render the following services in support of the Licensed Program, during Normal Working Hours, subject to the compensation fixed for each type of service in Support Organization's rate schedule set forth in Exhibit C hereto [omitted]:

2.1 Support Organization shall maintain a program control center capable of receiving (1) by automatic dial-in, computer-generated reports, or signals of system interruption or malfunction and (2) by telephone or network transmission, operator reports of system irregularities.

2.2 Support Organization shall maintain a telephone hot-line that allows Customer to report system problems and seek assistance in use of the Licensed Program.

2.3 Support Organization shall maintain a trained staff capable of rendering the services set forth in this Agreement.

2.4 Support Organization shall be responsible for using all reasonable diligence to correct verifiable and reproducible Errors when reported to Support Organization in accordance with Support Organization's standard reporting procedures. Support Organization shall, within ___ hours of verifying that such an Error is present, initiate work in a diligent manner toward development of an Error Correction. Following completion of the Error Correction, Support Organization shall provide the Error

Correction by means of a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction. Support Organization shall include the Error Correction in all subsequent Releases of the Licensed Program. Support Organization shall not be responsible for correcting Errors in any version of the Licensed Program other than the most recent Release of the Licensed Program, provided that Support Organization shall continue to support prior Releases superseded by recent Releases for a reasonable period sufficient to allow Customer to implement the newest Release, not to exceed _____ days.

2.5 Support Organization may, from time to time, issue new Releases of the Licensed Program to its customers generally, containing Error Corrections, minor Enhancements, and, in certain instances if Support Organization so elects, major Enhancements.

Support Organization shall provide Customer with one (1) copy of each new Release, without additional charge. Support Organization shall provide reasonable assistance to help Customer install and operate each new Release, provided that such assistance, if required to be provided at Customer's facility, shall be subject to the supplemental charges set forth in Exhibit C hereto [omitted].

2.6 Support Organization may, from time to time, offer major Enhancements to its customers generally for an additional charge. To the extent Support Organization offers such

Enhancements, it shall allow Customer to license a maximum of _____ copies of each Enhancement for at least ____ percent (____%) off the retail list rate offered to customers who do not subscribe to contract support of Support Organization.

2.7 Subject to space availability, Customer may enroll its employees in Support Organization's training classes, held at Support Organization's facility in _____, for regular or advanced training.

2.8 Support Organization publishes a monthly newsletter designed to keep its customers generally informed about the use and operation of the Licensed Program, features of new Releases and Enhancements, and current additional support offerings. Support Organization shall provide Customer with one (1) copy of the newsletter without charge and make additional copies available for a reasonable charge.

2.9 Support Organization shall consider and evaluate the development of Enhancements for the specific use of Customer and shall respond to Customer's requests for additional services pertaining to the Licensed Program (including, without limitation, data-conversion and report-formatting assistance), provided that such assistance, if agreed to be provided, shall be subject to supplemental charges mutually agreed to by Support Organization and Customer.

Section 3

FEEES AND CHARGES

3.1 Customer shall pay Support Organization its fees and charges based on the rate schedule set forth in Exhibit C hereto [omitted]. Support Organization reserves the right to change its rate schedule from time to time, provided that no such change will be effective until at least ___ days after Support Organization has given Customer written notice of such change. Such written notice may be in the form of a statement in Support Organization's regular newsletter.

3.2 Customer shall reimburse Support Organization for travel expenses (i.e., transportation, lodging, and meals) and telephone expenses incurred by Support Organization in rendering services to Customer more than _____ miles from one of Support Organization's service branch locations under this Agreement. Support Organization shall conform to Customer's standard expense and reimbursement policy as amended from time to time, the current version of which is set forth in Exhibit D hereto [omitted], and shall provide backup documentation called for in Customer's standard expense and reimbursement policy.

3.3 Support Organization shall invoice Customer at the beginning of each calendar month for all fees and charges accrued, and all reimbursable expenses incurred, during the previous month. Customer shall pay the invoiced amount promptly upon receipt of such invoice. Any amount not paid within _____ days after the invoice date shall bear interest at the lesser of

___ percent (___%) per month or the highest rate allowed by applicable law.

3.4 Customer shall be responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware (other than the hardware constituting the program control center maintained at Support Organization's facilities) necessary to operate the Licensed Program and to obtain from Support Organization the services called for by this Agreement.

Section 4

PROPRIETARY RIGHTS

4.1 To the extent that Support Organization may provide Customer with any Error Corrections or Enhancements or any other program, including any new programs or components, or any compilations or derivative works prepared by Support Organization (collectively, "Vendor Programs"), Customer may (1) install one (1) set of the Vendor Programs, in the most current form provided by Support Organization, in Customer's own facility; (2) use such Vendor Programs in connection with the Licensed Programs, and in a manner consistent with the requirements of the License Agreement, for purposes of serving Customer's internal business needs; and (3) make one (1) copy of the Vendor Programs in machine-readable form for nonproductive backup purposes only. Customer may not use, copy, or modify the Vendor Programs, or any copy, adaptation, transcription, or merged portion thereof,

except as expressly authorized by Support Organization.

Notwithstanding Section 6 hereof, Customer's rights under this Section 4.1 shall remain in effect for so long as Customer is authorized to use the Licensed Programs under the License Agreement. Upon termination of such License Agreement, Customer shall return or destroy the Vendor Programs, and returning the Vendor Programs in the manner required by the License Agreement shall be sufficient for such purpose.

4.2 The Vendor Programs, including any associated intellectual property rights, are and shall remain the sole property of Support Organization, regardless of whether Customer, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid Support Organization for the use of the work product. Customer shall from time to time take any further action and execute and deliver any further instrument, including documents of assignment or acknowledgment, that Support Organization may reasonably request in order to establish and perfect its exclusive ownership rights in such works, including any associated intellectual property rights.

Section 5

DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

5.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SUPPORT ORGANIZATION EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE LICENSED PROGRAM OR THE SERVICES TO BE RENDERED

HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.2 In no event shall Support Organization's cumulative liability for any claim arising in connection with this Agreement exceed the lesser of the total fees and charges paid to Support Organization by Customer within the last _____ months or the sum of \$_____. In no event shall Support Organization be liable for any indirect, consequential, special, exemplary, or incidental damages of whatever kind and however caused, even if Support Organization knew or should have known of the possibility of such damages.

5.3 No action, whether based in contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under this Agreement, may be brought by either party more than ____ years after such cause of action accrued, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.

Section 6

TERMINATION

6.1 This Agreement may be terminated as follows:

- 1.** This Agreement shall immediately terminate upon the termination of the License Agreement;
- 2.** This Agreement may be terminated by either party upon the

expiration of the then-current term of this Agreement, provided that at least ____ days' prior written notice is given to the other party; or

3. This Agreement may be terminated by either party upon ____ days' prior written notice if the other party has materially breached the provisions of this Agreement and has not cured such breach within such notice period.

6.2 Following termination of this Agreement, Support Organization shall immediately invoice Customer for all accrued fees and charges and all reimbursable expenses, and Customer shall pay the invoiced amount immediately upon receipt of such invoice. Customer may continue to use any work supplied to Customer by Support Organization for the remaining term of the License Agreement. Any amount not paid within ____ days after the invoice date shall bear interest at the lesser of ____ percent (____%) per month or the highest rate allowed by applicable law.

Section 7

MISCELLANEOUS

7.1 Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or

written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.

7.2 This Agreement and the parties' obligations hereunder shall be governed, construed, and enforced in accordance with the laws of the State of _____.

7.3 In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.

7.4 Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party, except to a successor of all or substantially all of its business and properties.

7.5 The waiver by either party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof nor of any further or additional right that such party may hold under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

[Support Organization]

[Customer]

By: _____

By: _____

Title: _____

Title: _____

Date: _____, 19__

Date: _____, 19__

[Exhibits A-D]