

APPENDIX E



System Asset Management System MAINTENANCE & SUPPORT AGREEMENT – TEXAS GOVERNMENT

This Maintenance & Support Agreement ("Agreement") is provided to organizations that license use of the System Asset Management System for Texas Government edition, ("Customer") and Netwatch Solutions Incorporated, a Texas corporation, ("Company") (collectively, the "Parties"). DIR Contract No. DIR-SDD-2205_____ and this Agreement constitute the entire Agreement between the parties.

WHEREAS, Company has provided to Customer a license to use the System Asset Management System software as specified in Schedule A of this Agreement ("Covered Software") pursuant to a software license agreement between the parties (the "License Agreement"); and

WHEREAS, Customer wishes to have Company provide maintenance and support services pursuant to the terms and conditions of this Maintenance & Support Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Customer and Company hereby agree as follows:

INCORPORATION OF DOCUMENTS

1. The following documents are attached hereto and, by this reference, incorporated into this Agreement:

Schedule A Covered Software, Site & System

Schedule B Authorized Customer Contacts

System Asset Management System for Texas Government End User License Agreement

DESCRIPTION OF BASIC MAINTENANCE AND SUPPORT SERVICES

2. **Basic Maintenance Services.** During the term of this Agreement, Company will maintain the Covered Software by providing software patches, updates and enhancements to Customer as the same are offered by Company to its licensees of the Covered Software under maintenance ("Updates"). All software updates and enhancements provide to Customer by Company pursuant to the terms of this Agreement shall be subject to the terms and conditions of the License Agreement between the parties. Updates will be provided on an as-available basis and include the items listed below:
 - a. Patches and updates that correct defects in the Covered Software that are directly attributable to programming if Company recognizes them as having a materially detrimental effect on the performance of the Covered Software, ("Bug Fixes");
 - b. Enhancements to keep current with the current hardware vendor's OS releases, as available from Company, provided that the current hardware vendor's OS release is both binary and source-compatible with the OS release currently supported by Company;
 - c. Enhancements to Covered Software to improve the internal software performance;
 - d. Enhancements to the Covered Software to improve data security;

Netwatch Solutions

MAINTENANCE & SUPPORT AGREEMENT – TEXAS GOVERNMENT

- e. Enhancements to Covered Software to improve functionality of existing capabilities;
- f. Updates or enhancements to existing support documentation;
- g. Updates do not include:
 - i. Platform extensions to different hardware platforms, different windowing system platforms, or different operating system platforms;
 - ii. Addition of new Modules and Feature Sets which Company markets and sells separately, when such new functionality was not provided in the original Covered Software;
 - iii. Addition of new applications or software modules that were not provided in the original Covered Software;
 - iv. Updates to hardware vendor operating systems and other system software;
 - v. Updates to Customer-developed software;
 - vi. Updates to third-party software (except any third party software embedded in the Covered Software) which includes operating system software, word processing, spreadsheet, Adobe Reader, Crystal Reports, Microsoft Share Point, database systems, DHCP scopes, DNS;
 - vii. Modifications to network or computer hardware; and
 - viii. Repairs of the Covered Software and data if failure is caused by:
 - 1. the failure of the equipment or supplies in use by the Customer;
 - 2. misuse or neglect of the covered software including, but not limited to, failure to perform scheduled data backups using a prudent method of media rotation;
 - 3. anyone other than Company or an authorized representative of the Company making any alteration to the Covered Software or to the system files which may affect the Covered Software;
 - 4. environmental conditions, including, but not limited to, insufficient, excessive, or irregular power, failure of air conditioning, excessive heat or humidity, flood, water, wind or lightening;
 - 5. use of the Covered Software for purposes other than those which it was expressly designed;
 - 6. the relocation or reinstallation of the Covered Software;

The Company reserves the right to charge additional support fees at its then standard rates for services performed in connection with reported incidents or for Repairs that are later determined to have been due to hardware or software not supplied by Company, or by actions of the Customer.

Updates will be provided in machine-readable format and updates to related documentation will be provided in hard copy form. All such deliveries shall be made to a Customer Contact as designated in Exhibit B.

MAINTENANCE & SUPPORT AGREEMENT – TEXAS GOVERNMENT

Duplication, distribution and installation of the Updates is the responsibility of the Customer, unless otherwise contracted herein. If requested, Company or its authorized representative will provide on-site assistance in the installation of the Updates on a time and materials basis, plus expenses.

3. **Basic Support Services.** During the term of this Agreement, Company will provide services described herein to respond to and resolve performance problems of the Covered Software as reported by the Customer under terms defined within this Agreement.
- a. **Methods of Support Contact:** Company will make available to Customer a telephone number (“Customer Support Line”) for Customer to call to report a problem with the Covered Software. The Customer Support Line operates 24 x 7 x 365 and may be answered by Company using automated techniques, including voice messaging. Additionally, Company will make available to Customer an electronic-mail address (“Customer Support E-Mail”) for Customer to report a problem with the Covered Software. Customers can send messages to the Customer Support E-Mail at anytime.
 - b. **Support Agreement Number:** For purposes of problem notification, Customer may be required to indicate the Contract Number shown on Page 1 of this Agreement.
 - c. **Support Classification:** Upon receipt by Company of notice from Customer through the Customer Support Line or through the Customer Support E-Mail of an error, defect, malfunction or nonconformity in the Covered Software, Company shall classify the problem according to one of the following types.
 - i. **Severity 1:** Produces an emergency situation in which the Covered Software is inoperable, produces incorrect results, or fails catastrophically.
 - ii. **Severity 2:** Produces a detrimental situation in which performance (throughput or response) of the Covered Software degrades substantially under reasonable loads, such that there is a severe impact on use; the Covered Software is usable, but materially incomplete; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted.
 - iii. **Severity 3:** Produces an inconvenient situation in which the Covered Software is usable, but does not provide a function in the most convenient or expeditious manner, and the Customer suffers little or no significant impact.
 - iv. **Severity 4:** Produces a noticeable situation in which the use is affected in some way which is reasonably correctable by documentation change or by a future, regular release from Company. Requests that are not problems, but are for enhanced new features are also classified as Severity 4 support requests.
 - d. **Basic Support Response:** Company will respond via E-Mail to all support requests not later than the next business day. The response will identify whether the support request is deemed a request for new features or in the case where the support request is deemed a problem, 1) the severity level assigned to the problem, and 2) the incident number assigned to the problem. Additionally, the Company will:
 - i. On Severity 1 problems, Company will immediately begin to diagnose the problem to correct the issue as soon as reasonably possible, but in any event, Company will provide a response via telephone within 4 hours indicating 1) whether the problem has been duplicated, and 2) the estimated time of repair. Company will continue to provide best efforts to resolve the problem in less than 24 hours. The resolution may be delivered to Customer as a work-around or as an emergency software fix. If Company delivers a work-around, the severity classification will drop to Severity 2.



Netwatch Solutions

MAINTENANCE & SUPPORT AGREEMENT – TEXAS GOVERNMENT

- ii. On Severity 2 problems, Company will begin to diagnose the problem to correct the issue as soon as reasonably possible, but in any event, Company will provide a response via telephone within 24 hours. Company will continue to provide best efforts to resolve the problem in less than 5 calendar days. The resolution may be delivered to Customer as a work-around or as an emergency software fix. If Company delivers a work-around, the severity classification will drop to Severity 3.
- iii. On Severity 3 problems, Company will exercise best efforts to resolve Severity 3 problems in the next maintenance release.
- iv. On Severity 4 problems, Company will exercise best efforts to resolve Severity 4 problems in a future maintenance release. On requests for new features, Company will advise the Customer whether the Company intends to add the feature in a future release or indicate the options the Customer has for customized software capabilities.

DESCRIPTION OF ENHANCED MAINTENANCE AND SUPPORT SERVICES

- 4. **Enhanced Support Services.** Company will provide enhanced support services, as indicated below.
 - a. **Installation of Updates:** If checked, duplication, distribution and installation of software updates will be provided by Company through remote access to the site listed in Schedule A.
 - b. **Per Incident Support:** If checked, Company will provide personnel via the phone, e-mail, or through remote access methods to assist customer with system administration, usage support, ad hoc training, reconfigurations, software reinstallations, software integrations, and other customer requested services. Inquiries that are deemed problems or are covered under a warranty / acceptance testing period do not incur a Per Incident charge. Customers will be billed for Per Incident Support for the Technical Support (per hour) according to price listed in DIR Contract No. DIR-SDD-2205.
 - c. **On-Site Support:** If checked and as requested by Customer, and upon reasonable notice, Company will provide personnel to Customer location to perform system administration, usage support, ad hoc training, reconfigurations, software reinstallations, software integrations, and other customer requested services. All requests will be documented and Company will work on a best effort basis. The minimum call duration is two hours. Customer will be billed for labor, including travel time, plus reasonable expenses required for the performance of the requested service. Expenses for travel and travel-related expenses and individual expenses in excess of US\$500 require the prior approval of Customer. Fees for On-Site Support are contained for the Technical Support (per hour) according to price listed in DIR Contract No. DIR-SDD-2205.
 - d. Enhanced support does not include custom software development, application integration, report writing, or any other software development that is provided under a separate services agreement.

CHARGES

- 5. The initial Annual Maintenance fee for Basic Maintenance & Support is based upon the price for Maintenance as listed in pricing for DIR Contract No. DIR-SDD-2205. Renewal fees are calculated annually for a 1-year period based on the then current list price of the Covered Software and may be subject to an inflationary adjustment, of not more than 10%, defined at the time of renewal. If you purchase



Netwatch Solutions

MAINTENANCE & SUPPORT AGREEMENT – TEXAS GOVERNMENT

additional software or licensed users for such software, these additions will automatically be subject to the maintenance fees and will be invoiced accordingly. Charges for any partial month of coverage will be prorated on the basis of a thirty (30) day month to coincide with an existing annual maintenance term.

6. All charges for maintenance & support are payable in advance.
7. Charges do not include charges related to third party software programs, which may be required to run the Covered Software. You may be required to pay separately for any upgrades in such third party programs.

TERM AND TERMINATION

In accordance with DIR Contract Number DIR-SDD-2205.

8. Reinstatement of lapsed maintenance will require full payment of the maintenance fees that would have been due from the expiration of the last active maintenance period through the reinstatement date, plus a 15% administrative surcharge. Payment of the applicable amount for the current maintenance period would be due upon reinstatement. This reinstatement policy applies if the maintenance has been cancelled for non-payment of fees or there is a lapse in maintenance for other reasons. Upon reinstatement of maintenance, Customer will be entitled to the latest version of the Covered Software.

CONDITIONS

9. **Access.** Software Maintenance is conditioned upon provisions by Customer to Company of reasonable appropriate access to the system(s) running the Covered Software, including but not limited to, passwords, system data, file transfer capabilities, and remote log-in-capabilities. Company will maintain security of the system and will comply with Customer's standard security procedures. Information access by Company agents or employees as a result of accessing Customer's system shall be deemed confidential information pursuant to the terms of the Software License Agreement executed between the parties.

Customer shall also provide an active voice telephone line at each site which is available continuously when required for support access.

10. **Change Management.** The parties shall develop a mutually agreeable change management process that covers how modifications are made to the Covered Software. At a minimum, such process shall require Company to notify Customer and obtain Customer's approval prior to implementing any material changes to the software or services provided by Company.

11. **Force Majeure.**In accordance with DIR Contract Number DIR-SDD-2205.

12. **Exclusivity of Remedies.** The provisions of this Agreement and the License Agreement constitute the exclusive provisions applicable to Company's maintenance and support of the Licensed Software and the provision and support of data and operations thereof. Company disclaims any and all warranties, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, except those specifically set forth in the License Agreement.

13. **Notices.** Any notices given hereunder shall be given pursuant to and as provided in the License Agreement. In addition, Customer agrees that Company may provide invoices to Customer by means of facsimile or email transmission.

14. **Limit of Liability.** Limitation of liability shall be in accordance with Section 9.K of Appendix A of DIR-SDD-2205. Under no circumstances shall either party be entitled to any consequential, punitive or indirect damages.



Netwatch Solutions

MAINTENANCE & SUPPORT AGREEMENT – TEXAS GOVERNMENT

15. **Latest Version.** Company reserves the right to limit the scope of services provided if the Customer chooses not to install the latest version of the Covered Software.
16. **Assignment.** The terms of this Agreement may not be assigned or subcontracted by Company without the express written consent of Customer.
17. **Independent Contractor.** The relationship of Company to Customer under this Agreement is that of independent contractors. Nothing contained herein shall be construed to create any relationship of joint venturers, partners, agency or employment between Company and Customer. Neither party shall have any authority to enter into agreements on behalf of, or similarly bind, the other.
18. **Binding Successors.** This Agreement is binding upon and shall inure to the benefit of the parties hereto, their heirs, successors and assigns.
19. **Taxes.** In accordance with DIR Contract Number DIR-SDD-2205.
20. **Governing Law.** All provisions of this Agreement will be governed by the laws of Texas. If any provision of this Agreement is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect. A waiver of the strict performance of any term of this Agreement by either party shall not be deemed waiver of any other provision of this Agreement.



Netwatch Solutions
MAINTENANCE & SUPPORT AGREEMENT – TEXAS GOVERNMENT
SCHEDULE A

COVERED SITES, SOFTWARE AND CONFIGURATION

A. Covered Site

This Agreement covers the following software installation at the site:

FILLED OUT ON A CUSTOMER BY CUSTOMER BASIS

B. Covered Software

This Agreement covers the following software components at each site listed in Section A, above.

- Netwatch Solutions Products under contract DIR-SDD-2205.

C. This Agreement covers the following installation.

Application Server: __ as initially installed ____
Database Server: ____ as initially installed ____
Database: ____ as initially installed ____

