

Texas Department of Information Resources
APPENDIX D to DIR CONTRACT NUMBER DIR-TSO-3077

SOFTWARE MAINTENANCE & SUPPORT AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SOFTWARE SUPPORT SERVICES. TDI WILL ONLY PROVIDE SOFTWARE MAINTENANCE & SUPPORT SERVICES TO <CUSTOMER> IF <CUSTOMER> FIRST ACCEPTS THE TERMS OF THIS AGREEMENT.

This Software Maintenance & Support Agreement (the "Agreement") is entered into by and between TDI Technologies, Inc. ("TDI") and _____ ("**<Customer>**") and is effective as of your Maintenance and Support anniversary renewal date of <Date>.

This Agreement is for a one (1) year term of "Coverage". This Agreement may be renewed for consecutive one (1) year periods when offered by TDI and accepted by <Customer>. Renewal requires both parties to agree to renew. Failure to renew on the part of either party on or before a future anniversary renewal date renders the agreement null and void.

Maintenance & support services for the Software are available immediately under this Agreement.

TDI offers maintenance & support services for its software applications for a minimum of one (1) year after the general release date. After the first year of support and maintenance service for a particular software application or version, TDI may withdraw the maintenance & support services with three months written notice to any purchaser of such maintenance and support services.

The term "Software" means all electronically stored source, object, executable, command and data files owned by TDI and identified as "ConsoleWorks" which <Customer> is granted a license in accordance with the applicable end user license agreement to use by TDI for which maintenance & support services under this Agreement are available and provided to <Customer> by TDI.

The term "Equipment" means the computer equipment at <Customer>'s installation location.

The term "System" means the Equipment and Software.

The term "Off Shift" means holidays and hours outside coverage hours identified for the level of Maintenance and Support obtained under this Agreement.

The term "Invoice" means the transaction/purchase document(s) which detail(s) the specific ConsoleWorks components for which Software support services under this Agreement are provided to <Customer> and the effective dates and fees for the associated increment of maintenance & support services.

To be eligible for this Software Maintenance & Support Agreement Your System that hosts TDI Software must be unmodified and maintained at an operating system revision level and a Software revision level supported by TDI, as set forth in the documentation accompanying the Software. Further, modifications made by customization functionality

provided with the standard Software will not be considered a "modification" for purposes of this Agreement.

DIR Contract TSO-3077, this Agreement with applicable references to the TDI License Agreement, and its applicable Invoices are the complete and exclusive agreement regarding the maintenance & support services and replace any oral or written communications between <Customer> and TDI. For a change to be valid both <Customer> and TDI must sign it.

An Invoice specifying follow-on purchases of TDI Software and associated maintenance & support increments represent an obligation to TDI to provide maintenance and support services for this Software and acceptance by <Customer> that items on that Invoice are subject to the terms of this agreement.

SOFTWARE SUPPORT SERVICES

Under this Agreement, TDI will provide 1) Software updates and release notes made generally available and 2) improvements and enhancements to the documentation made generally available.

Telephone assistance will be provided to your technical contact for 1) routine, short duration installation and usage ("how to") questions, and 2) identifying, verifying and resolving problems in the Software. Software support assistance is available by telephone, e-mail or fax, according to the Support Level to which <Customer> subscribes: Silver level is 8 a.m. to 5 p.m. Monday through Friday excluding holidays for your primary time zone (North America only), Gold level is 7 a.m. to 7 p.m., seven days a week including holidays for your primary time zone (North America only), and Platinum level is 24 hours per day, seven days a week including holidays.

SOFTWARE SUPPORT LIMITATIONS

On-site Software support is not included under this Agreement.

Software support services provided under this Agreement are only those related to the Software. Answering questions concerning another vendor's operating system or program, unrelated to the Software, will not be provided by TDI.

Software support services provided by TDI which are required, in TDI's opinion, because the Software has 1) not been used in accordance with TDI's instructions; 2) been modified, altered, converted or repaired by <Customer> without written approval from TDI; 3) any of your Equipment has malfunctioned; or 4) any other cause within your control which resulted in the Software becoming inoperative will be offered by TDI with a written Statement of Work (SOW) and

technical services proposal. <Customer> will either accept (Purchase Order), or offer suggested modifications or reject the proposal in writing.

LIMITED WARRANTY

TDi's sole warranty with respect to the Software upgrades or updates shall be in accordance with DIR Contract DIR-TSO-3077, Appendix A, Standard Terms and Conditions For Services Contracts, Section 7.C, Product Warranty and Return Policies.

Repair or replacement of products shall not extend the term of this Agreement beyond the dates specified in this Agreement.

TDi represents, warrants, and agrees that the Services described in this Agreement shall be performed in a timely, professional, competent, good and workmanlike manner by appropriately-qualified personnel, and in accordance with the highest professional standards for such service, the best practices in TDi's industry, and the requirements of this Agreement.

EXCLUSIONS OF OTHER WARRANTIES. TDI DISCLAIMS ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED. TDI NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME ANY OTHER LIABILITIES IN CONNECTION WITH THE SOFTWARE SUPPORT PROVIDED HEREUNDER.

TDi does not warrant uninterrupted or error free operation of the Software.

PREMIUM SERVICES

Telephone assistance for Off Shift hours is available by immediate upgrade to a Maintenance and Support level that provides coverage for the hours in question.

On-site Software support services may be made available as a professional services engagement. If <Customer> requests such services and provides <Customer>'s requirements, TDi may provide a written SOW and proposal for a professional services engagement. TDi may advise <Customer> that TDi is unable to provide the required services. Acceptance of any offer by <Customer> will be signified by an <Customer> Purchase Order (PO).

Prior to incurring any additional charges for these Premium Services, Your written approval will be obtained.

CUSTOMER RESPONSIBILITIES

You agree to the terms of the Software License Agreement in effect at the time the Software, and/or changes, improvements, or updates to the Software are obtained.

You agree to maintain a current and tested backup copy of the Software and relevant data. In no event shall the back up copy be more than 60 days old.

You agree to maintain your System with an operating system revision level supported by TDi running properly. If it is determined that the Software is not operating because of improper operating system operations, it is <Customer>'s responsibility to correct the operating system problem.

CHARGES, PAYMENT, AND TAXES

Charges for Software maintenance & support services are recurring on an annual basis and shall be in accordance with DIR Contract DIR-TSO-3077, Appendix A, Standard Terms and Conditions For Services Contracts, Section 8, Pricing, Purchase Orders, Invoices, and Payments. The annual charge for Software support services is equal to a specified discount percentage of the current Software List Price, as published in DIR Contract DIR-TSO-3077, Appendix C, Pricing Index and is listed on the TDi (through Alphaworks, LLC) quote and Invoice for renewal of Maintenance and Support Coverage.

TDi or its reseller may, at its expense, audit the number of copies used upon reasonable written notice to <Customer>.

Payment for Software maintenance & support services shall be made to the party (either TDi or its reseller) from whom you acquired the Coverage.

ASSIGNMENT

This Agreement is non-assignable and non-transferable by either TDi or <Customer>.

LIMITATION OF LIABILITY

Shall be in accordance with DIR Contract DIR-TSO-3077, Appendix A, Standard Terms and Conditions For Services Contracts, Section 10.K, Limitation of Liability.

SEVERABILITY

If any provision of this Agreement is found to be invalid or unenforceable by any court, such provision shall be ineffective only to the extent that it is in contravention of applicable laws, without invalidating the remaining provisions hereof.

NON-INFRINGEMENT WARRANTY

TDi represents, warrants, and agrees that neither the Services nor <Customer>'s ownership or use of any Deliverables or other reports, goods, designs, drawings, advice, technology or other products of the Services or other deliverables will infringe or violate any patent, copyright, trademark, trade secret, mask work or other proprietary or intellectual property. <Customer> shall obtain full license to use any and all technology, proprietary materials and intellectual property without liability and without restriction under the terms of the Software License Agreement in effect at the time the Software, and/or changes, improvements, or updates to the software are obtained.

Ownership of DATA

All reports, data, ideas, information, and other products, resulting from <Customer>'s use of the Services and

Software pursuant to this Agreement are the sole and exclusive property of <Customer>. .

GENERAL

Please retain a copy of your receipt or invoice to establish proof of eligibility for Software maintenance & support services.

TDi or <Customer> may terminate this Agreement in accordance with DIR Contract DIR-TSO-3077, Appendix A, Standard Terms and Conditions For Services Contracts, Section 11.B, Termination.

TDi may not be liable for an event of Force Majeure in accordance with DIR Contract DIR-TSO-3077, Appendix A, Standard Terms and Conditions For Services Contracts, Section 11.C, Force Majeure.

If there is a default or breach of the terms of this Agreement other than failure to pay, the other party shall comply with DIR Contract DIR-TSO-3077, Appendix A, Standard Terms and Conditions For Services Contracts, Section 11, Contract Enforcement.

This Agreement is governed by the laws of the State of Texas, without reference to its conflicts of law principles.

We agree that the state district court of Travis County, Texas, shall be the exclusive forum for resolving any disputes between us. Customer does not waive any defense or immunity in entering into this Agreement.

/end/

Software Maintenance and Support Agreement Offered to <Customer> on behalf of TDi Technologies,, Inc. (TDi)

Signature

Printed Name

Title

Date

Accepted on behalf of <Customer>

Signature

Printed Name

Title

Date